

SEP 11 1960

Jack C. Silver, Clerk
U.S. DISTRICT COURT

Defendants.

))))))))

90-C-660-B

¹ Adam Sterling is no stranger to litigation in this Court. Prior to this action, Plaintiff has filed seven civil rights actions each against multiple defendants (86-C-763-B, 86-C-800-B, 86-C-801-B, 86-C-803-B, 86-C-804-B, 86-C-805-B, 86-C-806-B), as well as three habeas corpus actions (85-C-775-C, 86-C-665-B, 88-C-182-B). In each case the action was dismissed or habeas relief denied.

by a criminal Complaint signed by a United States Magistrate in Tulsa, Oklahoma. The arrest took place July 31, 1985. Subsequent to the arrest Plaintiff was arraigned before a United States Magistrate in Dallas and bond was set. Plaintiff apparently did not post a sufficient bond for his release.

Against this backdrop, it is clear that Plaintiff has not, and will not be able to state cognizable claims against several defendants.

United States Magistrates

The Defendant William Sanderson (§3) and the Defendant John or Jane Doe (§10) are United States Magistrates entitled to absolute judicial immunity for their judicial acts. *Stump v. Sparkman*, 435 U.S. 349, 359 (1978). Here, Defendant Sanderson, it is alleged, arraigned and set bond for Plaintiff. (§20-25). Likewise, Defendant Doe (United States Magistrate in Tulsa) had allegedly failed to set reasonable bond. (§30) These are without question acts "judicial" in nature and as such, the United States Magistrate Defendants are entitled to immunity for those acts. *Id.*, at 362. Plaintiff's claims against these Defendants are frivolous.

United States District Courts

Plaintiff also alleges that Defendant, "U.S. District Court, Tulsa" (§ 13) failed, neglected, and refused to discharge its oversight duties over the Grand Jury and/or to assure indictment was within specified guidelines". (§ 28.) No allegations are made concerning Defendant, "U.S. District Court, Northern District of Texas" (§ 12).

Plaintiff's suit against these Defendants must be considered frivolous, for the "Court", were it able to be sued as such, is likewise entitled to absolute judicial immunity.

Federal Prosecutors

Plaintiff complains that Defendant Snoke, an Assistant United States Attorney (§ 8), refused to obtain an indictment within thirty (30) days, and refused to proffer evidence to the Grand Jury, instead proffering "oratory instead of facts" (§ 28, 33). Plaintiff also complains that John or Jane Doe, the "U.S. District Attorney in Tulsa" (§ 8) failed to "discharge his proper oversight duties." (§ 28.)

Immunity also is given to prosecutors when carrying out their traditional prosecutorial functions. *Imbler v. Pachtman*, 424 U.S. 409, 424-31, (1976). In light of the allegations against these two Defendants, both Defendants are entitled to prosecutorial immunity, and Plaintiff's suit against them is frivolous.

Dallas County Sheriff

Plaintiff's sole complaint against Defendant John or Jane Doe (Sheriff of Dallas, Texas (§ 7) is that Defendant Doe, "housed Plaintiff in Dallas County Jail where civil, constitutional and other rights were denied or abrogated". (§ 26.) Although rules of federal pleading are liberal, this allegation standing as it does without more, lacks any specificity about which rights were denied or how they were denied. Similarly, Plaintiff does not attempt to state how Defendant Doe was personally involved in the alleged deprivations. The allegations against this Defendant are simply too amorphous, lacking any meaningful notice for Defendants, to be considered anything but frivolous.

Other Superfluous Defendants

Plaintiff also names in his suit Defendants,

John or Jane Doe individually or as financial institutions or as other law enforcement agencies, state or federal, whether in Tulsa, Oklahoma area or

elsewhere.

(¶ 5.) In addition Plaintiff names as Defendants,

John or Jane Doe ... the Court Clerk in the US District Court, Dallas, Texas together with one or more John or Jane Does in their employ, et al.

(¶ 9.) Also named are Defendants,

John or Jane Does ... apparently employed in pretrial release department, Dallas US District Court and/or U.S. Probation Office, Dallas, and elsewhere.

(¶ 11.) Plaintiff makes no specific allegations of wrongdoing by these Defendants. They are simply never mentioned again in the Complaint. As such, these Defendants must also be dismissed because of Plaintiff's total failure to allege any supporting facts which might support a valid action.

United States Marshal(s)

Sterling also attempts to bring suit against one "John Doe", United States Marshal in Dallas, Texas "and one or more John and Jane Does in his/her employ". (¶ 6.)

Regarding suits brought against "John Does", it has been concluded that, "[t]here is no provision in the Federal Rules of Civil procedure for suit against persons under fictitious names". *Coe v. United States District Court for District of Colorado*, 676 F.2d 411, 415 (10th Cir. 1982). Consequently, it has been held that "[e]very pleading must contain the names of the parties thereto, if these are known." *Id.* Because some five years have passed since the alleged incident giving rise to this suit took place, Plaintiff has had more than ample time within which to discover and determine the true name(s) of these public employees. In these circumstances, allegations against fictitious defendants will be

dismissed.²

Remaining Governmental Defendants

After the above-described Defendants are dismissed the only governmental actor remaining is:

Defendant Scott Forbes (FBI) ... (§ 4.)

Plaintiff makes prima facie allegation against Defendant Scott Forbes, sufficient to withstand a §1915(d) review.

Additional Defendants in "Addendum (sic) to Petition"

In addition to the above Defendants, Plaintiff names one Jack Dornbusch (§ 45), one Mark Kelldorf of Dallas, Texas, (d/b/a Arkma Basin Exploration Company((§ 46), and one Vince Perini of Dallas, Texas (his attorney in 3-85-193-M, Northern District of Texas) (§ 47).

In his ninth cause of action, Plaintiff alleges that Defendants Dornbusch and Delldorf either converted Plaintiff's property or breached some contract. In his tenth cause of action Plaintiff alleges Defendant Perini committed malpractice. The salient facts relating to these Defendants appear to have no relationship to the operative facts supporting his action against FBI agent Scott Forbes, hence jurisdiction for the ninth and tenth causes of actions cannot be founded upon the pendant claim doctrine. *Jones v. Intermountain Power Project*, 794 F.2d 546, 549 (10th Cir. 1986).

Likewise, the ninth and tenth causes of action do not present federal questions; thus the only remaining basis for jurisdiction is the court's diversity jurisdiction. Plaintiff,

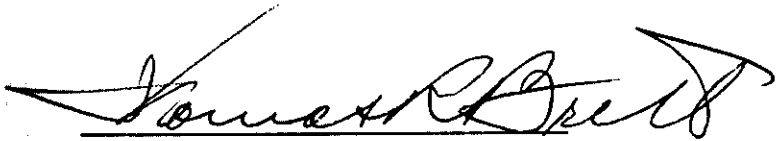
² Suit against the "one or more John or Jane Does employed in a similar capacity" to Defendant Scott Forbes, will likewise be dismissed.

however, has not plead the requisite jurisdictional facts to make any determination of Plaintiff's residency vis-a-vis Dornbusch, Kelldorf and Perini. Therefore, no basis for jurisdiction being found, the claims against these non-governmental Defendants must also be dismissed.

Conclusion

All Defendants EXCEPT: Scott Forbes (FBI), are hereby Dismissed pursuant to 28 U.S.C. §1915(d).

SO ORDERED THIS 14th day of September, 1990.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SEP 14 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

WILLIAM L. HICKMAN and
RACHEL HICKMAN,

Plaintiffs,

vs.

No. 90-C-417-E

FARMERS INSURANCE COMPANY,
INC.,

Defendant.

**JUDGMENT AND ORDER SUSTAINING DEFENDANT'S
MOTION OF SUMMARY JUDGMENT AND DENYING
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

NOW on this 14th day of September, 1990, the above-referenced matter comes on before this Court upon the Motion of Defendant for Summary Judgment and the Request of Plaintiff for Reconsideration of Motion for Summary Judgment. And the Court being duly advised in the premises finds that:

The original policy purchased on February 19, 1989 lapsed by its terms for non-payment of premium on November 22, 1989.

The Court further finds that the reinstatement of the policy was prospective from the time and date of the premium payment on December 19, 1989 and did not cover the accident which occurred during the period of lapse.

Therefore the Court finds that Plaintiffs' Request for Reconsideration of Motion for Summary Judgment should be denied and that Defendant's Motion for Summary Judgment should be sustained.

IT IS THEREFORE ORDERED that Plaintiffs' Request for Reconsideration of Motion for Summary Judgment is hereby denied;

Defendant's Motion for Summary Judgment is hereby sustained and judgment is entered for the Defendant.

ORDERED this 14th day of September, 1990.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

REBECCA G. FRENGER,

Plaintiff,

vs.

Case No. 89-C-922-B

CENTRAL STATES ORTHOPAEDIC AND
SPORTS MEDICINE CENTER,
former TULSA ORTHOPAEDIC
ASSOCIATES, an Oklahoma general
partnership, et al

Defendants.

ORDER OF DISMISSAL WITHOUT PREJUDICE AS TO DEFENDANTS,
JAMES C. MAYOZA, M.D. AND JAMES C. MAYOZA, M.D., INC.

Before the Court is the Motion for Dismissal of Action Without Prejudice by the Plaintiff, Rebecca Frenger, as to Defendants, James C. Mayoza, M.D. and James C. Mayoza, M.D., Inc., filed pursuant to Fed. R. Civ. P. 41(a)(2). The Court finds based upon the above-described Motion that Plaintiff's claims in this action should be dismissed without prejudice as to Defendants, James C. Mayoza, M.D. and James C. Mayoza, M.D., Inc., with each party to bear its own attorneys fees and costs.

IT IS THEREFORE ORDERED that the Plaintiff's Complaint against the Defendants, James C. Mayoza, M.D. and James C. Mayoza, M.D., Inc., is hereby dismissed without prejudice, with Plaintiff and said Defendants, James C. Mayoza, M.D. and James C. Mayoza, M.D., Inc. to bear their own attorneys fees and costs.

IT IS FURTHER ORDERED that this dismissal is without prejudice to the right of any of the remaining Defendants in this action, to assert any claims or lawsuits, if any, which they may

have or hold against Defendants, James C. Mayoza, M.D. and James C. Mayoza, M.D., Inc.

DATED this 14th day of September, 1990.

S/ THOMAS R. BRETT

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 13 1990

Jack C. Silver, Clerk
U. S. DISTRICT COURT

GENERAL ACCIDENT INSURANCE COMPANY
OF AMERICA,

Plaintiff,

vs.

FIRST NATIONAL BANK AND TRUST COMPANY
OF TULSA, a national banking
association, as successor personal
representative of the estate of
F. Paul Thieman, Jr., deceased; and,
NORMA APPLGATE, successor trustee of
the Gladys M. Thieman Trust, and
F. Paul Thieman and Gladys M. Thieman
Trust,

Defendants.

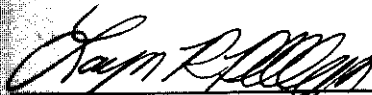
Case No. 88-C-254-P

J U D G M E N T

The Court finds that the December 1, 1987 probate "Order Approving Settlement of Creditor's Claim" does not trigger the exclusionary language of General Accident's Professional Liability Policy.

The Court therefore enters judgment against plaintiff in the amount of \$325,000 plus post-judgment interest at the rate of 7.95%.

ENTERED THIS 13 DAY OF SEPTEMBER, 1990.



LAYN R. PHILLIPS
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 13 1990

Jack C. Silver, Clerk
U. S. DISTRICT COURT

GENERAL ACCIDENT INSURANCE COMPANY
OF AMERICA,

Plaintiff,

vs.

FIRST NATIONAL BANK AND TRUST
OF TULSA, a national banking
association, as successor personal
representative of the estate of
F. Paul Thieman, Jr., deceased; and,
NORMA APPLGATE, successor trustee of
the Gladys M. Thieman Trust, and
F. Paul Thieman and Gladys M. Thieman
Trust,

Defendants.

Case No. 88-C-254-P

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND JUDGMENT

I. NATURE OF ACTION

A. This is an action for Declaratory Judgment brought by plaintiff, General Accident Insurance Company ("General Accident"), which seeks a determination of its rights and liabilities under a professional liability insurance policy. The determination is sought in connection with a claim made by Norma Applegate ("Applegate"), Successor Trustee of the Gladys M. Thieman Trust ("Thieman Trust"), against the estate of F. Paul Thieman, Jr. General Accident contends that there is no coverage under its policy because the claim by Applegate falls within the exclusions of its policy, as set forth in Section V of this Order.

Applegate, as trustee, contends that her judgment falls within the terms and conditions of the policy and is not barred by the exclusions contained therein. [Supplemental Pretrial Order at 1, August 23, 1990].

II. FEDERAL JURISDICTION

Federal jurisdiction is invoked pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, diversity of citizenship between the parties, 28 U.S.C. 1332, and amount in controversy exceeding the sum of \$10,000 exclusive of interest and costs. [Supplemental Pretrial Order at 1, Aug. 23, 1990].

III. PROCEDURE UTILIZED FOR NONJURY TRIAL

The Court utilized its standard affidavit procedure in this nonjury trial. The streamlined nonjury trial procedure involved the submission of witness affidavits in lieu of direct examination on most points. The parties were given an opportunity to present both supplemental direct examination and full cross-examination of the witnesses during trial. Also, as set forth below, the parties submitted comprehensive stipulations on undisputed matters.

IV. ORDER IDENTIFYING TRIAL EXHIBITS

On August 24, 1990, the Court entered an "Order Identifying Trial Exhibits" which stated in part: "The attached exhibits were utilized in the trial of this matter and will be referenced in the Court's Findings of Fact and Conclusions of Law." [Order at 1, Aug. 24, 1990 (copy attached)]. Accordingly, exhibits referenced herein will be identified in the same manner as they are identified in the August 24, 1990, Order.

V. UNCONTESTED FACTS

On June 18, 1990, this Court issued a scheduling order in this matter. On July 24, 1990, pursuant to that scheduling order, the parties filed a stipulation of undisputed facts. Pursuant to the Court's scheduling order, this matter came on for trial on August 23, 1990. The trial began with the Court receiving into evidence the stipulation of uncontested facts. All parties stated that they had no objection to the Court receiving this stipulation into evidence. Accordingly, the Court adopts the following uncontested facts as part of its findings and conclusions. The following facts are set forth verbatim (except as to references to exhibits) as contained in the parties' July 24, 1990 filing:

1. F. Paul Thieman, Jr. ("Thieman"), during his lifetime was a duly licensed practicing attorney in the State of Oklahoma. Prior to his death, Thieman was a partner of the law firm of Thieman and Kronfeld.

2. Plaintiff General Accident Insurance Company of America ("General Accident"), issued their Lawyers Professional Liability Insurance Policy No. PN150043 (the "policy"), to the law firm of Thieman and Kronfeld. The policy period was from December 1, 1983 to December 1, 1984. The policy provided, among other things, as follows:

THE COVERAGE

1. . . . To pay on behalf of the insured all sums in excess of the deductible amount stated in the Declarations which the insured shall become legally obligated to pay as damages as a result of CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD:

- (a) by reason of any act, error or omission in professional services rendered or that should have been rendered by the insured or by any person for whose acts, errors or omissions the insured is legally responsible, and arising out of the conduct of insured's profession as a lawyer or notary public;

* * *

PROVIDED ALWAYS THAT such act, error or omission or such personal injury happens:

- (aa) during the policy period, or
(bb) prior to the policy period, provided that prior to the effective date of this policy:

* * *

2. the Insured has no basis to believe that the Insured had breached a professional duty or committed a personal injury; and * * *

When the insured renders or fails to render services as an administrator, conservator, receiver, executor, guardian, trustee, or in any similar fiduciary capacity, the Insured's acts and omissions in such capacity shall be deemed for the purpose of this section to be the performance of professional services for others in the Insured's capacity as a lawyer provided that this coverage shall not apply to any loss sustained by the Insured as the beneficiary or distributee of any trust or estate.

THE EXCLUSIONS

1. This policy does not apply:

- (a) to any judgment or final adjudication based upon or arising out of any dishonest, deliberately fraudulent, criminal, maliciously or deliberately wrongful acts or omissions committed by the Insured. However, notwithstanding the foregoing, the Company will provide a defense for any such claims without any liability on the part of the Company to pay such sums as the Insured shall become legally obligated to pay as damages; * * *

The policy was in full force and effect at all times material to this action. See Order Identifying Trial Exhibits, Plaintiff's Ex.

A.

3. In 1980, Gladys M. Thieman formed the Gladys M. Thieman Trust ("Trust"), to which she conveyed substantially all her assets and property. The purpose of the Trust was to pay for her care and support during her lifetime. Thieman was designated as a trustee of the Trust, and Norma Thieman Applegate was designated as a successor trustee in the event that Thieman was unable to serve.

4. During his lifetime, Thieman served as trustee of the Trust and was the only person known to have written checks or made disbursements from said Trust. Thieman's acts as trustee of the Gladys M. Thieman Trust fell within the coverage provided by the policy.

5. Thieman died on September 29, 1984. His widow, Roberta Sue Thieman, was appointed executrix of his estate on October 23, 1984, in Probate Cause No. P-84-1037, filed in the District Court of Tulsa County, Oklahoma, entitled In the Matter of the Estate of F. Paul Thieman, Jr., deceased. Roberta Sue Thieman, as executrix, purchased a non-practicing extension coverage option, extending coverage provided by the plaintiff insurer under Policy No. PN150043 until December 1, 1985.

6. Upon the death of Thieman, the defendant, Norma Thieman Applegate, became successor trustee of the Trust. Upon endeavoring to obtain funds to pay certain expenses which accumulated for the

care and treatment of her mother, she discovered the only asset in the Trust bank account was the sum of \$500.00.

7. Roberta Sue Thieman, as executrix of the Thieman estate, had retained Edward Mysock, an attorney, to assist her in the probate. He undertook an investigation to determine the assets and the liabilities of the estate. In an audit of the Trust, he became aware of the fact that a substantial sum of money was missing. He was contacted by Norma Applegate, successor trustee, who requested his assistance in locating the assets of the trust. Mr. Mysock advised Norma Applegate that because of a conflict in interest, he could not represent her and suggested that she contact Gary Jackson, an attorney and certified public accountant, to assist her in this matter.

8. Norma Applegate retained Gary Jackson to assist her in pursuing the assets of the Trust. Following his initial investigation, pursuant to advice from Gary Jackson and James Gotwals, Norma Applegate filed a Creditor's Claim for the amounts misappropriated by Thieman during his tenure as trustee. The Creditor's Claim submitted by Norma Applegate, as Trustee for the Gladys M. Thieman Trust, stated as follows:

"The claim is for funds and assets misappropriated from said trust by decedent while decedent was serving as trustee of said trust, and is in an amount not less than \$250,000, nor more than \$1,000,000.

The amount of the claim will be determined when an accounting for said trust is completed."

On January 17, 1985, the Creditor's Claim submitted by Norma Applegate on behalf of the Trust was approved as a contingent claim

by Roberta Sue Thieman, as executrix of the estate. The claim was approved as a contingent claim by the Court on January 22, 1985. See Order Identifying Trial Exhibits, Plaintiff's Ex. B.

9. On March 4, 1985, Roberta Sue Thieman resigned as executrix of the Thieman Estate, and The First National Bank and Trust Company of Tulsa ("Successor Personal Representative"), was appointed successor personal representative by the District Court having jurisdiction over the probate.

10. On July 30, 1985, Norma Applegate, as trustee of the Gladys Thieman Trust, filed a lawsuit in Tulsa County District Court captioned Norma T. Applegate, as Successor Trustee of the Gladys M. Thieman Trust, Plaintiff, v. The First National Bank and Trust Company of Tulsa, as Successor Personal Representative of the Estate of F. Paul Thieman, Jr., Defendant, Cause No. CJ-85-4858. The lawsuit alleged Thieman's violations as Trustee and sought, among other things, recovery of specific assets which Applegate contended were misappropriated from the Trust by Thieman. On November 12, 1985, Norma Applegate, as Successor Trustee, amended her Petition and alleged that Thieman had drafted the trust and had breached the fiduciary duty owed by a lawyer to his client. On March 30, 1989, Norma Applegate filed her Second Amended Petition alleging negligence and mistake in addition to the allegations previously made.

11. Following the filing of the Amended Petition by Norma Applegate, as Successor Trustee, alleging that Thieman had violated his obligation as an attorney, the Successor Personal

Representative notified General Accident that a claim had been made against Thieman's estate. General Accident undertook the defense of said case, pursuant to the terms and conditions of their policy, pursuant to a reservation of rights reserving their rights to deny coverage by reason of the exclusions of said policy.

12. After an examination of all the available records in the Trust by Gary Jackson for and on behalf of the Trust, and Brent Johnson, an accountant employed by the Successor Personal Representative, the amount of money missing from the trust was agreed to be the sum of \$325,000.00. In addition, 2/3 of the value of certain stocks which had been in the possession of Thieman were returned to Norma Applegate, Successor Trustee of the Trust, as property of the Trust.

13. Norma Applegate, Trustee, and the Successor Personal Representative of the Thieman Estate entered into an agreement settling the contingent claim and submitted the same to the Court. On December 1, 1987, the Court entered its Order approving the settlement and setting the amount of the Trust's Creditor's Claim Trust at \$325,000.00. This constituted a final adjudication as to the debt owed by the Thieman Estate to the Trust, as contemplated by the policy. See Order Identifying Trial Exhibits, Plaintiff's Ex. C.

VI. EXHIBITS

The following exhibits were offered into evidence by plaintiff and received by the Court:

Plaintiff's Ex. "A"

General Accident
Insurance Policy

(attached as Ex.
A to July 24,
1990 Joint
Statement of
Undisputed Facts)

Plaintiff's Ex. "B"

January 22, 1987
Creditor's Claim

(attached as Ex.
B to July 24,
1990 Joint
Statement of
Undisputed Facts)

Plaintiff's Ex. "C"

December 1, 1987
Probate Order

(attached as Ex.
C to July 24,
1990 Joint
Statement of
Undisputed Facts)

Plaintiff's Ex. "D."

Gladys M. Thieman
Trust Agreement

Defendant First National Bank introduced no exhibits. Defendant Applegate introduced the following exhibits relating only to an objection asserted on attorney client privilege grounds: Defendant's Exhibits A-1, A-2, A-3, A-4, A-5 and A-6. Pursuant to Federal Rule of Evidence 105, the evidence was received for that sole and limited purpose. The defendant's privilege objection was overruled for the reasons set forth on the record.

VII. WITNESSES

The plaintiff called the following witnesses at trial:

1. Edward J. Mysock, Jr.
2. Norma Applegate.
3. Gary Jackson.
4. Jeff Morrow.

The defendant Applegate called the following witness at trial:

1. Norma Applegate.

Defendant First National Bank called no witnesses, although it cross-examined various witnesses presented by other parties.

VIII. ADDITIONAL FINDINGS OF FACT

A. Mr. Edward Mysock testified on behalf of plaintiff. The credible testimony presented by this witness, as tempered by cross-examination, may be summarized as follows:

1. He is a duly licensed and practicing attorney in the State of Oklahoma specializing in tax and estate law. He represented Rebecca Sue Thieman, personal representative of the Estate of F. Paul Thieman, Jr., during her tenure as personal representative of the F. Paul Thieman, Jr., Estate. Prior to giving a deposition in this cause or submitting his affidavit he contacted Rebecca Sue Thieman, and she waived any attorney-client privilege relating to this matter.

2. He was acquainted with F. Paul Thieman, Jr., during his lifetime and prepared tax returns for him on some of Thieman's business ventures.

3. Following the death of F. Paul Thieman, Jr., his widow, Rebecca Sue Thieman, requested that he represent her in her capacity as personal representative of her husband's estate. He accepted employment and commenced a search to determine the assets and liabilities of the estate.

4. He spent many hours searching for assets in this country, Europe and elsewhere based on F. Paul Thieman's financial statements. He was unable to locate any evidence of substantial earnings by Thieman for several years prior to Thieman's death.

5. Mysock made an accounting of the Gladys M. Thieman Trust during a portion of the period of time that F. Paul Thieman, Jr. was trustee of the Trust (1983-84). His accounting revealed that substantial sums of money (at least in excess of \$200,000) were missing from the Trust.

6. Upon F. Paul Thieman, Jr.'s death, his sister, Norma Applegate, became successor trustee of the Trust. She was advised of the missing funds. Mysock was contacted by her to assist her in locating assets of the Trust but because of the conflict of interest, he declined and recommended that she retain Gary Jackson to represent her as trustee.

7. Subsequent to the retention of Gary Jackson by Norma Applegate, a creditor's claim was filed by the Gladys M. Thieman Trust. The claim reads as follows:

The claim is for funds and assets misappropriated from said Trust by decedent while decedent was serving as trustee of said Trust, and is in an amount not less than \$250,000 nor more than \$1,000,000.

The actual amount of the claim will be determined when an accounting for said Trust is completed.

See Order Identifying Trial Exhibits, Plaintiff's Ex. B.

8. Mysock did not have sufficient facts to determine the exact amount of the claim. The personal representative approved the claim as a contingent claim. The exact amount of the claim was to be determined after an accounting of the Trust.

9. The personal representative was aware of the existence of the insurance policy covering F. Paul Thieman, Jr. in his practice

of law. The personal representative did not make a claim under the policy, nor did Mysock make a claim under the policy.

10. Deposits were made to the Trust during Thieman's tenure as trustee, but Mysock did not know the source of these deposits.

11. The Mysock affidavit, which represented Mysocks direct examination, was inartfully drafted, failing to track the testimony Mysock intended to give. Moreover, the affidavit was reviewed and signed in haste by the witness Mysock. The affidavit contained numerous errors and misstatements and was thoroughly impeached on cross examination. An accurate summary of the impeachment areas is set forth in the first three transcript pages of closing argument by Mr. Gotwals, Applegate's attorney. As a result, the credibility of this witness in this proceeding was substantially impeached. Other than the express findings above, the Court has placed no weight on this testimony.

B. Ms. Norma Thieman Applegate was the plaintiff's second witness. Her testimony was as follows:

1. She is the daughter of Gladys M. Thieman and the sister of F. Paul Thieman, Jr. In 1979, her mother formed the Gladys M. Thieman Trust which was to provide for Gladys Thieman's care and maintenance during her lifetime and upon her death was to be distributed equally between herself and her brother, F. Paul Thieman, Jr. The initial value of the Trust was thought to be between \$600,000 and \$900,000.

2. Her brother, F. Paul Thieman, Jr., was trustee of the Trust and was the only person who appears to have written checks or

authorized expenditure of funds from the Trust. She was named as Successor Trustee in the event something happened to her brother.

3. In 1984, upon the death of her brother, F. Paul Thieman, Jr., she became Successor Trustee. She went to the Bank of Oklahoma to withdraw money from the Trust to pay expenses of Gladys M. Thieman and discovered that there was only \$500.00 in the Trust Account.

4. She has made a diligent search and has been unable to locate any funds or assets of the Trust except for some Mobile stock which was recovered from her brother's Estate. She has been unable to determine what her brother, F. Paul Thieman, Jr., did with the rest of the Trust assets.

C. Mr. Gary Jackson was the plaintiff's third witness. His credible testimony, tempered by cross-examination and rulings of the Court, was as follows:

1. He is a Certified Public Accountant and Attorney at Law, specializing in tax planning. He was contacted by Ed Mysock who was representing Rebecca Sue Thieman, Personal Representative of F. Paul Thieman, Jr. Estate. He was advised by Mr. Mysock that there was a Trust involved in the Estate which created a conflict of interest for Mr. Mysock and requested that Mr. Jackson assist the successor trustee in preparing an accounting of Trust assets. Mr. Jackson was introduced to Norma Applegate, the Successor Trustee, and began reviewing the records turned over to him by Mr. Mysock. A review of all records available at that time indicated that a least \$400,000 of Trust assets were not properly accounted

for. After completing this review, Mr. Jackson assisted Norma Applegate's attorney in preparing a creditor's claim. Due to the fact that they had no definite information as to the original amount of Trust assets or the disposition thereof, the creditor's claim was in an amount not less than \$250,000 nor more than \$1,000,000, with the actual amount to be determined upon completion of an accounting of the Trust assets.

2. After reviewing all available records and conferring with an accountant from the firm of Hogan and Slovack, which was retained by First National Bank and Trust Company, Successor Personal Representative of F. Paul Thieman, Jr. Estate, the parties were able to account for certain Trust assets and they agreed upon a figure of \$325,000 as the amount that could not be accounted for. The \$325,000 figure represented money taken from the Gladys M. Thieman Trust and not known to be used for or held for the benefit of Gladys M. Thieman.

3. Jackson made no findings of dishonesty or criminal conduct with respect to F. Paul Thieman's conduct as trustee.

D. Mr. Jeffrey L. Morrow was plaintiff's fourth and final witness. He credibly testified as follows:

1. He is Vice President and Senior Trust Officer for the First National Bank and Trust Company of Tulsa, the Successor Personal Representative of the Estate of F. Paul Thieman, Jr., deceased. He is a duly licensed attorney in the State of Oklahoma.

2. The F. Paul Thieman, Jr. Estate was assigned to him by his supervisor in August, 1985. He reviewed the file and took

necessary action to recover assets of the Estate. He reviewed all claims made against the Estate, most of which had already been submitted to the Court and approved as contingent claims.

3. He was aware that the Personal Representative's attorneys had written the insurance company requesting that it defend the suit brought by Norma Applegate as Successor Trustee of the Gladys M. Thieman Trust.

4. He consulted with the Personal Representative's attorneys on the matter and ultimately agreed to a settlement of the claim in the amount of \$325,000 based on information provided to him by the Personal Representative's attorneys and accountants. The settlement was approved on the basis that the \$325,000 was misappropriated by F. Paul Thieman, Jr. In this regard he was relying exclusively on the advice of his counsel, Conner & Winter (FNB's counsel). He conducted no independent investigation of his own with respect to the nature of the alleged misappropriation.

E. Norma Thieman Applegate was called as the defendant's only witness. She credibly testified as follows:

1. The deceased, F. Paul Thieman, Jr., was her brother. Her mother set up a Trust in April of 1980 and appointed her brother, F. Paul Thieman, Jr., as Trustee. She was appointed as Successor Trustee should anything ever happen to her brother. Upon her brother's death, she became the Successor Trustee and held that position at the time of trial.

2. During her brother's administration of the Trust, her mother's needs were totally taken care of by her brother. Her

mother's bills were paid regularly and kept current by her brother.

3. At no time, prior to her brother's death, did her mother, to her knowledge, ask her brother for an accounting of the Trust assets. As a beneficiary of the Trust, Applegate had the right to ask for an accounting, but never did. There was never any hint of a problem with the Trust assets. Her brother had the complete right to invest the funds as he saw fit, and there was never any complaint by her mother or by her brother that the Trust lacked funds, or could not pay her mother's bills.

4. Her mother had complete faith in her brother Paul. Had her mother known that he was commingling her funds with his own, her mother would have acquiesced. If Applegate had known at the time that he was commingling the funds, she too would have acquiesced. The Trust gave her brother the complete right to make investments, and she had no reason to doubt his honesty and integrity.

5. Her attorneys, Gary Jackson and James Gotwals, created the creditor's claim to be filed in the Probate action. After reviewing the creditor's claim, she signed the same. Her attorney, James Gotwals, also created the pleadings which were filed in the CJ-85-4858 case.

F. F. Paul Thieman, Jr. had broad powers under the Trust. He had the power to hold assets in his own name. He had the power to invest without disclosing his fiduciary capacity. He had the power to hold assets without noting their financial holdings. Given these powers, missing Trust assets may never be located. The

Trustee's powers during the Grantor's lifetime included the following:

- (a) All those powers prescribed in the Oklahoma Trust Act, and without limiting the foregoing, shall have the following express powers:

* * *

(iii) The trustee shall not be responsible for any action taken in good faith with respect to any investment of the trust estate, or for any loss or depreciation resulting from the purchase, retention, sale, exchange, lease or alteration of any investment, or from any want of diversification of the investment of the trust estate. [Plaintiff's Exhibit D.].

G. The Creditor's Claim filed by Norma Applegate, as Trustee of the Gladys M. Thieman Trust, in December, 1984, asserted misappropriation of the part of Thieman as Trustee. The Creditor's Claim did not include any reference to professional malpractice or any other act covered under the insurance policy. The sole basis for recovery set forth in the Creditor's Claim was misappropriation of funds by the Trustee, F. Paul Thieman, Jr.

H. The policy specifies that it does not apply to any judgment or final adjudication based upon or arising out of any dishonest, deliberately fraudulent, criminal, maliciously or deliberately wrongful acts or omissions committed by the insured F. Paul Thieman, Jr. It contains no specific provision regarding misappropriation.

I. The December 1, 1987 probate order contains no finding of dishonesty on the part of F. Paul Thieman, Jr. Nor does it contain specific findings on any of the other categories covered by the exclusion. Moreover, the order contains no specific finding of

misappropriation on the part of F. Paul Thieman, Jr. The order merely approves a settlement of \$325,000 as a contingent claim based upon an allegation of misappropriation.

J. The plaintiff, General Accident Insurance Company, has not met its burden of proving by a preponderance of the evidence that the December 1, 1987 probate order was based upon, or arose out of, acts or omissions of the insured which triggered the exclusionary provision of the policy.

K. The December 1, 1987 probate order does not represent a judgment or final adjudication based upon or arising out of any dishonest, deliberately fraudulent, criminal, maliciously or deliberately wrongful acts or omissions committed by the insured. It contains no specific provision regarding misappropriation, nor any findings which would trigger the exclusionary provision.

L. The December 1, 1987 probate order arose out of a settlement which included more than just the creditor's claim. Applegate, as a condition of this settlement, was required to dismiss with prejudice all claims for accounting made in her related state court civil case. Plaintiff in this case clearly recognizes the connection between the probate case and the state court civil case, having proposed a judgment which would find that General Accident is not obligated to indemnify FNB against any judgment rendered in CJ-85-4858. This same case number is discussed previously in finding #10, Section V, supra. To the extent the December 1, 1987 probate order arose in part out of a settlement of the state court proceeding (whether in whole or in

part) this further prevents this Court from finding that the December 1, 1987 probate order was based upon or arose out of one of the exclusionary categories. As noted in finding #10, supra, the state court proceeding contained numerous allegations, some of which were clearly outside the exclusionary provisions, and within the policy's coverage provisions.

M. The December 1, 1987, probate order does not represent a judgment or final adjudication falling within the exclusionary provisions of the General Accident policy.

N. Any finding of fact in this order which should more appropriately be considered a conclusion of law is hereby deemed a conclusion of law. Likewise, any conclusion of law set forth in this order which should more appropriately be deemed a finding of fact is hereby deemed to be a finding of fact.

IX. CONCLUSIONS OF LAW

A. Interpretation of Insurance Contract

The Court "cannot change the terms of an unambiguous contract." Traverse v. World Service Life Ins. Co., 436 F. Supp. 810, 811 (W.D. Okla. 1977). However, if the language in an insurance policy is ambiguous or equivocal, it must be construed in favor of the insured and against the insurer. Houston v. National General Ins. Co., 817 F.2d 83, 85 (10th Cir. 1987).

Furthermore, the terms of an insurance policy must be interpreted not in a technical sense but rather should be construed "according to their plain, ordinary and accepted use in common speech, unless it affirmatively appears that a different meaning

was intended." Id. (quoting National Aviation Underwriters, Inc. v. Altus Flying Service, Inc., 555 F.2d 778, 782 (10th Cir. 1977)).

Finally, "an insurance policy's words of exclusion are to be narrowly viewed and its words of inclusion are to be broadly viewed." Conner v. Transamerica Ins. Co., 496 P.2d 770, 774 (Okla. 1972).

The insurance policy at issue here does not define "misappropriation" nor does it define "dishonesty" or any of the other words used in the subject exclusionary provision. These words are susceptible of a range of reasonable meanings. In such a case, "the Court must apply the meaning which provides the most coverage for the insured." Houston, 817 F.2d at 85 (quoting Poland v. Marten, 761 F.2d 546, 548 (9th Cir. 1985)).

The exclusionary provision at issue in this case reads as follows:

1. This policy does not apply

(a) to any judgment or final adjudication based upon or arising out of any dishonest, deliberately fraudulent, criminal, maliciously or deliberately wrongful acts or omissions committed by the insured.

The December 1, 1987 probate order unquestionably was both "based upon" and "arose out of" an allegation of misappropriation of trust assets by deceased attorney Thieman. Indeed, misappropriation by attorney Thieman was the only allegation that formed the basis of the creditor's claim. See Order Identifying Trial Exhibits, Plaintiff's Ex. B. ("The claim is for funds and assets misappropriated from said trust by decedent while decedent was serving as trustee of said trust. . ."). If the exclusionary

language of the policy contained the phrase "any judgment or final adjudication based upon or arising out of any misappropriation committed by the insured," this case would be easily resolved in favor of plaintiff General Accident. The policy, however, does not contain such language. As a result, the central question in this case is whether "misappropriated", as used in the December 1, 1987 probate order, is the functional equivalent of any of the following, any one of which would trigger the exclusionary provision:

- (a) dishonest acts or omissions;
- (b) deliberately fraudulent acts or omissions;
- (c) criminal acts or omissions;
- (d) maliciously wrongful acts or omissions;
- (e) deliberately wrongful acts or omissions.

See Order Identifying Trial Exhibits, Plaintiff's Ex. A.

Plaintiff's counsel believes "misappropriated" is more analogous to the phrase "dishonest acts" than any of the other categories contained in the exclusionary provision. As defense counsel conceded in closing argument following questions by the Court, if "misappropriated" is the functional equivalent of "dishonest acts" (or any of the other four categories above) then the exclusionary provision applies. In this regard, defendant Applegate concedes that misappropriation may involve the commission of dishonest acts. According to Applegate, however, misappropriation does not necessarily involve the commission of dishonest acts or intentional wrongdoing. Moreover, the defendant

contends, accurately, that the exclusionary language of the insurance policy here at issue must be strictly construed against the plaintiff General Accident. Conner v. Transamerica Ins. Co., 496 P.2d 770 (Okla. 1972).

B. The Term Misappropriation Does Not Necessarily Involve Dishonesty

Dishonest means:

1. not honest; disposed to lie, cheat, or steal; not worthy of trust or belief.
2. proceeding from or exhibiting lack of honesty; fraudulent.

The Random House Dictionary of the English Language, Unabridged Edition at 412 (1983).

Misappropriate means:

1. to put to a wrong use.
2. To apply wrongfully or dishonestly, as funds entrusted to one's care.

Id. at 915.

Black's Law Dictionary defines misappropriation as:

The act of misappropriating or turning to a wrong purpose; wrong appropriation; a term which does not necessarily mean speculation, although it may mean that. Term may also embrace the taking and use of another's property for sole purpose of capitalizing unfairly on good will and reputation of property owner.

Blacks' Law Dictionary at 901 (Fifth Ed. 1979).

While it is clear that misappropriation, by definition, can and probably most often does involve dishonesty, the Court cannot conclude that misappropriation always involves dishonesty. It is not difficult to conceive of a set of facts under which misappropriation is "wrong" without necessarily being "dishonest."

For example, suppose a trustee is authorized to invest trust funds only in General Motors Corporation stock, but one time she mistakenly invests in Ford Motor Company stock. A misappropriation? Yes. Dishonesty? Not necessarily.

This distinction is characterized by the case of United States v. Omaha Tribe of Indians, 253 U.S. 275, 40 S. Ct. 522 (1920). In that case the President of the United States was deemed to be the trustee of certain funds of the Omaha Indian Tribe pursuant to an 1854 treaty. The President authorized the use of trust funds to construct an infirmary on the Omaha reservation. The Court of Claims, which had jurisdiction to hear and determine, inter alia, claims for misappropriation of the tribe's funds "for purposes not for its material benefit," determined that the building was not used by the tribe and was not a building contemplated by the treaties. Id. at 281, 40 S. Ct. at 524. The United States Supreme Court held that the use of the tribe's funds for this building did not result in a material benefit for the tribe and therefore was a "misappropriation" of the funds. This finding of a "misappropriation" however, did not connote dishonesty or theft on the part of the President of the United States. Rather, it simply meant the infirmary building "was not what it ought to have been" and the tribe "received no benefit from it." Id.

The cases cited and discussed by plaintiff General Accident clearly suggest that in many, if not most, factual situations involving misappropriation, the facts giving rise to misappropriation will also support a finding of dishonesty, fraud,

deceit, or maliciously or deliberately wrongful acts. For example, in Standard Accident Ins. Co. v. Stewart, 184 Okla. 109, 85 P.2d 277 (1938), the Oklahoma Supreme Court held that an illegal act by a guardian resulting in a loss constitutes a misappropriation. But this is not the same as saying misappropriation is always an illegal act. Likewise, in Rabideau v. Schmitt, 404 So.2d 519 (La. App. 1981), the court held that theft of securities by an attorney holding the securities for his client constituted a "dishonest, fraudulent, criminal or malicious act" and was therefore not covered by the attorney's malpractice insurance. But again, this case cannot be said to stand for the proposition that misappropriation always constitutes a dishonest, fraudulent, criminal or malicious act. In Morris v. Board of Commissioners of Adams County, 139 P. 582 (Colo. App. 1914), the court analyzed the meaning of the word "misappropriation" as used in Rev. St. (1908) § 1251 and held: "The word 'misappropriation', as used in this act, . . . contemplate[s] something more than mere mistake in judgment . . . It implies tortious or fraudulent conduct on the part of the misappropriator." Id. at 583. This language supports defendant's position because it clearly acknowledges that misappropriation can involve a "mere mistake in judgment."

Both parties cited Johnston v. Turner, 159 Ala. 356, 47 S. 570 (1908) in support of their respective positions. The Court concludes it clearly supports defendant's position. The Alabama Supreme Court in this defamation case considered whether an allegation that another person misappropriated public funds

constituted defamation per se. The court stated that although misappropriation "is susceptible of imputing a meaning of dishonesty," id. at 571, "considered alone, the word does not necessarily, in all cases, mean dishonesty." Id. at 571.

C. Misappropriation By A Trustee Of Trust Funds

As referenced in the December 1, 1987 probate order, and in the creditor's claim filed by Applegate in this case, misappropriation is not necessarily a dishonest or deliberately wrongful act committed by the insured.

At the time she filed her creditor's claim, defendant Applegate was aware of the Mysock accounting results. She was also aware that \$500 was left in the Trust account. She was also aware, however, of the broad powers that Thieman held under the Trust. Given this background, the Court has little doubt that Applegate and her attorneys subjectively believed Thieman had engaged in a dishonest form of misappropriation when she filed her creditor's claim. That, however, is not the issue before the Court. The question is, rather, whether Applegate's allegation of misappropriation, which resulted in the December 1, 1987, probate order, renders that order a "judgment or final adjudication based upon or arising out of any dishonest, deliberately fraudulent . . . or deliberately wrongful acts. . . ." committed by Thieman. Given the above referenced rules of interpretation, and the discussion below, the Court concludes the question must be answered in the negative.

A key issue in this case is the evidence the Court may

consider in determining the meaning of the word "misappropriated" as used in the December 1, 1987, probate order.

General Accident contends the Court may consider all pertinent background information gathered and made known to Applegate prior to her filing of the creditor's claim in which she alleged misappropriation by a trustee. This information, plaintiff contends, helps explain whether the December 1, 1987 probate order was based upon or arose out of any of the categories of proscribed conduct.

Applegate contends, on the other hand, that the Court may not consider extrinsic evidence in determining the meaning of "misappropriated" as used in the December 1, 1987 probate order, but instead is limited to the judgment roll before the probate court in determining the meaning of "misappropriated".¹

If Applegate is correct, the Court would be compelled to rule in favor of Applegate because it would be required to interpret the word "misappropriated" in a vacuum without reference to extrinsic evidence in this case. Because the term misappropriated, viewed in isolation, may or may not involve dishonest or deliberately wrongful conduct, and because the Court could not take into consideration any extrinsic evidence concerning the nature of in

¹Applegate relies on the following four cases: Timmons v. Royal Globe Insurance Co., 713 P.2d 589 (Okla. 1985) (the judgment roll consists of the petition, the process, the return, the pleadings subsequent thereto, reports, verdicts, judgments, and all material acts and proceedings of the court); Chander v. Denton, 741 P.2d 855 (Okla. 1987); Atlantic Permanent Federal Savings and Loan v. American Casualty Co., 839 F.2d 212 (4th Cir. 1988), cert. denied, 486 U.S. 1056; National Union Fire Ins. Co. of Pittsburgh v. Continental Illinois Corp., 666 F. Supp. 1180 (N.D. Ill. 1987).

the creditor's claim filed by Applegate, the Court would be compelled to resolve this ambiguity in favor of Applegate.

The four cases cited by defendant are dispositive. Timmons dealt primarily with the issue of prejudgment and post-judgment interest under 12 O.S. § 727, but a sub-issue involved the impropriety of resorting to materials outside the judgment roll in attempting to divine the meaning and/or effect of a final judgment from a prior case. The Oklahoma Supreme Court rejected the insurer's argument that if the judgment roll is ambiguous the Court must look to the evidence adduced at trial and the instructions given in the course of the proceedings. Timmons, 713 P.2d at 591-92. Chandler likewise dealt primarily with issues other than how to determine the meaning and/or effect of a final judgment in a prior case. However, as in Timmons, this was a sub-issue and, as in Timmons, the Oklahoma Supreme Court clearly held that any controversy over the meaning and effect of a final judgment must be resolved by resorting solely to the face of the judgment roll. Chandler, 741 P.2d at 861 n.7.

These two cases strongly suggest the Court should not consider evidence adduced prior to the probate settlement, and especially should not consider facts which were not even before the probate court in the underlying action. Moreover, in National Union the court considered a similar exclusionary provision in an insurance policy and stated that where the underlying case had been settled, a finding of dishonesty in that litigation was no longer possible

and therefore the exclusion could not apply. National Union, 666 F. Supp. at 38. Finally, in Atlantic the court considered a similar exclusionary provision and likewise held the provision inapplicable because there had been no final adjudication of dishonesty. In that case even the insurance company conceded that "mere allegations of dishonesty in the underlying action would not suffice to trigger the exclusion." Atlantic, 839 F.2d at 217.

Thus, the Court agrees with defendant that it must determine the meaning of "misappropriated" in this case without reference to extrinsic facts. With its review confined to the judgment roll, the Court concludes the use of the word "misappropriated" in the December 1, 1987, probate order, is not sufficient to trigger the exclusionary provision of the insurance policy.

However, even if the Court is incorrect in its decision as a matter of law to confine its review to the judgment roll, the factual findings in this case, as set forth above, do not compel a different conclusion. The credible extrinsic evidence presented by plaintiff simply is insufficient to support a finding of dishonesty or any of the other exclusion categories. The witness Mysock was the one witness who arguably could have provided a basis for such findings. His testimony, however, failed to convince the Court for the reasons set forth above. Moreover, even assuming arguendo that the Court had accepted all of Mysock's testimony, the December 1, 1987, order at best, would be nothing more than a final adjudication arising out of an allegation of dishonest misappropriation. Finally, the linkage between the December 1,

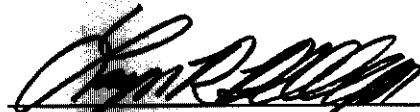
1987 probate order and the simultaneous settlement of related claims in pending state court action, some of which fell squarely within the policy's coverage provisions, further muddies the water. Thus, even if the Court were to follow the approach suggested by plaintiff, these ambiguities would likewise compel a result in favor of the insured.

The Court further concludes defendants are entitled to post-judgment interest, pursuant to 28 U.S.C. § 1961. Everaard v. Hartford Accidental and Indemnity Co., 842 F.2d 1186, 1193-94 (10th Cir. 1988).

VIII. JUDGMENT

A Judgment reflecting the ruling of the Court is being filed contemporaneously with this Order.

IT IS SO ORDERED THIS 13TH DAY OF SEPTEMBER, 1990.



LAYN R. PHILLIPS
UNITED STATES DISTRICT JUDGE

Defendant's Ex. A-6 Letter of 8-22-90 from Norma Applegate to
Edward J. Mysock, Jr.

A handwritten signature in cursive script, appearing to read "Layn R. Phillips", written over a horizontal line.

LAYN R. PHILLIPS
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LURA E. NEWTON and JOSEPH
V. GOMEZ, a minor, through
his guardian ad litem,
LURA E. NEWTON,

Plaintiffs,

vs.

THE STUART-JAMES COMPANY,
INC., a corporation;
JOSEPH R. READ, SR., an
individual; DAVID MCCOY,
an individual,

Defendants.

Case No. 89-C-100-B

FILED

SEP 13 1990

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL

COMES NOW, before the undersigned Judge the Application of Plaintiff to dismiss the above entitled action with prejudice. The Court finds that all parties have been given notice, and there is no objection by any party.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above entitled action is hereby dismissed, in its entirety, with prejudice.


JUDGE OF THE DISTRICT COURT

HOWARD AND WIDDOWS, P.C.
Leslie White
C.S.B.#96674
c/o Howard & Widdows
2021 South Lewis, Suite 570
Tulsa, Oklahoma 74104
(918) 744-7440

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED
SEP 13 1990
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

PHILLIP WRIGHT, Individually; and)
as the surviving spouse of)
MARLENE LaCLAIR, Deceased; and as)
the sole surviving parent of)
HELEN WRIGHT, Deceased,)
Plaintiff,)

vs.)

Case No. 90-C-555-B

FARMERS INSURANCE COMPANY, INC.,)
a Foreign Corporation,)
Defendant.)

NOTICE OF DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff above named and pursuant to Federal Rule of Civil Procedure 41(a)(1)(i), dismisses the above captioned action with prejudice to the further refiling thereof, said action having been settled and compromised. Plaintiff would show this Honorable Court that no Answer nor Motion of any kind has been filed herein by Defendant.

Respectfully submitted,



Joe M. Fears (OBA #2850)
Marsh, Shacklett & Fears
506 South Main, Suite 201
Tulsa, Oklahoma 74103
918/587-0141
Attorneys for Plaintiff

Certificate of Mailing

I, Joe M. Fears, hereby certify that on the 12th day of September, 1990, I caused to be mailed, postage prepaid, a true and correct copy of the above and foregoing instrument to Mr. Jim Joyce, Branch Claims Manager, Farmers Insurance Group, P.O. Box 470244, Tulsa, Oklahoma 74147-0244.



Joe M. Fears

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 13 1990

NINTH DISTRICT PRODUCTION CREDIT)
ASSOCIATION,)
)
Plaintiff,)
)
v.)
)
BILLY GENE DOOLIN, et al.,)
)
Defendants.)

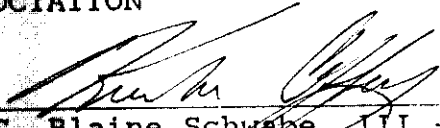
Jack C. Silver, Clerk
U.S. DISTRICT COURT

Case No. 87-C-546 C

NOTICE OF DISMISSAL OF CERTAIN DEFENDANTS

Plaintiff, Ninth District Production Credit Association, hereby gives notice of dismissal of the above-entitled cause as to the defendants, Hanoco, Inc., Mid-America Gas Line Corp. and Indian Electric Cooperative, Inc., which have not filed an answer or motion for summary judgment in the above-entitled action, pursuant to Fed. R. Civ. P. 41(a)(1). Plaintiff gives notice of dismissal of said defendants without prejudice to its claims herein in any other respect or against any other defendants hereto.

NINTH DISTRICT PRODUCTION CREDIT
ASSOCIATION

By: 
G. Blaine Schwabe, III - OBA #8001
Kevin M. Coffey - OBA #11791

Of the Firm:

MOCK, SCHWABE, WALDO, ELDER,
REEVES & BRYANT,
A Professional Corporation
Fifteenth Floor
One Leadership Square
211 North Robinson
Oklahoma City, Oklahoma 73102
(405) 235-5500

ATTORNEYS FOR NINTH DISTRICT
PRODUCTION CREDIT ASSOCIATION

CERTIFICATE OF MAILING

This is to certify that on the 11th day of September, 1990, a true and correct copy of the above and foregoing instrument was mailed, postage prepaid, to the following:

John M. Young
YOUNG & YOUNG
P. O. Box 1364
Sapulpa, OK 74067

ATTORNEYS FOR VIRGINIA E. DOOLIN, NOW
ORR, SARA E. DOOLIN, NOW CANFIELD, AND
SUSAN L. DOOLIN

Stephen H. Foster
P. O. Box 815
Bristow, OK 74010

W. C. Sellers
W. C. "Bill" Sellers, Inc.
P. O. Box 1404
Sapulpa, OK 74067-1404

ATTORNEYS FOR DEFENDANTS BILLY
GENE DOOLIN, WALLACE J. DOOLIN
AND MARK LEE DOOLIN

Rorschach, Pitcher, Castor
& Hartley
244 S. Scraper
Vinita, Oklahoma 74301

ATTORNEYS FOR KAMO ELECTRIC
COOPERATIVE, INC.

Clayton L. Badger
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Drumright, OK 74030

ATTORNEY FOR FIRST STATE
BANK OF OILTON

Carl A. Barnes
2727 East 21st, Suite 305
Tulsa, OK 74114

ATTORNEY FOR MID-AMERICA
GAS LINE CORP.

Joseph J. McCain, Jr.
Tony L. Gehres
2400 First National Tower
Tulsa, OK 74103

ATTORNEYS FOR DEFENDANT
WOOD OIL COMPANY

Hanoco, Inc.
c/o Richard D. Hancock, Service Agent
104 N. Ohio
Drumright, OK 74030

Stan Stroup
Norwest Bank Minneapolis, N.A.
8th and Marquett
Minneapolis, MN

Tony Michog
Norwest Bank Minneapolis, N.A.
370 17th Street, Suite 3560
Denver, CO 80202

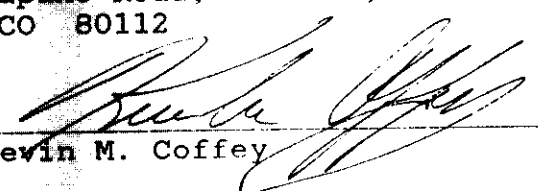
Indian Electric Cooperative, Inc.
c/o Dick Travis
P. O. Box 49
Cleveland, OK 74020

Mark J. Pordos
310 Bank of Oklahoma Plaza
Oklahoma City, OK 73102

Thomas J. Moore
2500 Republic Plaza
370 Seventeenth Street
Denver, CO 80202-4004

ATTORNEYS FOR NORWEST BANK
MINNEAPOLIS, N.A.

Reserve Holdings Corp.
Attn: John R. Frye, Jr., Service Agent
Michael Sawoya
12835 E. Arapaho Road, Tower 2, No. 800
Englewood, CO 80112


Kevin M. Coffey

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE:

OTASCO, INC.

EMPLOYER TAX
I.D. #13-2855286

Debtor,

OTASCO, INC., a Nevada
Corporation,

Plaintiff and Appellee,

vs.

THE MOHAWK RUBBER COMPANY,
an Ohio corporation,

Defendant, Counter-
Claimant, Third-Party
Claimant and Appellant,

vs.

AMERITRUST COMPANY NATIONAL
ASSOCIATION, a national bank,

Third-Party Defendant
and Appellee.

Case No. 88-03410-W
(Chapter 11)

FILED

SEP 12 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

Adversary No. 89-0163-W

District Court
No. 89-C-723 B

NOTICE OF SUBSEQUENT APPEAL

The above appeal (No. 89-C-723 B) was commenced by The Mohawk Rubber Company ("Mohawk") on September 5, 1989 as a "protective measure" (Notice of Appeal, page 1) pending subsequent determinations of the issues in the adversary proceeding (Adv. No. 89-0163-W) by the Bankruptcy Court.

Shortly thereafter, on September 29, 1989, the issues were determined by the Bankruptcy Court by a final Order in the adversary proceeding. Mohawk then filed an appeal of the final Order entered in the adversary proceeding. This second appeal on

the same issues was filed October 9, 1989 and has been docketed as Case No. 89-C-832 E in this Court.

Otasco, Inc. suggests that the earlier filed appeal (No. 89-C-723 B) is premature, has been superceded by the subsequent appeal (No. 89-C-832 E) of the same issues from the same adversary proceeding and that the earlier filed appeal (No. 89-C-723 B) should be dismissed.

DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON

By: Sam G. Bratton II

Sam G. Bratton II
1000 Atlas Life Building
Tulsa, Oklahoma 74103
(918) 582-1211

Attorneys for Otasco, Inc.

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 18 day of September, 1990, a true and correct copy of the above and foregoing pleading was mailed, with proper postage thereon, to:

Gary H. Baker, Esq.
Baker, Hoster, McSpadden, Clark,
Rasure & Slicker
800 Kennedy Building
Tulsa, Oklahoma 74103

John Henry Rule II, Esq.,
Gable & Gotwals, Inc.
2000 Fourth National Bank Building
Tulsa, Oklahoma 74119

Frederic Dorwart, Esq.
E. Mark Barcus, Esq.
Holliman, Langholz, Runnels & Dorwart
Suite 700 Holarud Building
Ten East Third Street
Tulsa, Oklahoma 74103-3695

Sam G. Bratton II
Sam G. Bratton II

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 12 1990

BOBBY BIGGERSTAFF,

Plaintiff,

v.

LOUIS W. SULLIVAN,
SECRETARY OF HEALTH AND
HUMAN SERVICES,

Defendant.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

89-C-865-B ✓

ORDER

The court has for consideration the Findings and Recommendations of the Magistrate filed August 22, 1990, in which the Magistrate recommended that this case be remanded to the Secretary of Health and Human Services for additional medical testimony and analysis. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed.

It is therefore Ordered that this case is remanded to the Secretary of Health and Human Services for additional medical testimony and analysis in order to ascertain the exertional capabilities of plaintiff and whether or not he can lift fifty pounds and thus perform medium work as defined by 20 C.F.R. § 404.1567(c).

Dated this 12th day of September, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
SEP 12 1990
U.S. DISTRICT COURT

BOBBIE LOUISE MOSES, Individually)
and as Next Friend of Shata Niko)
Moses, Deceased,)

Plaintiff,)

VS.)

NO. 90-C-622-E

HOMELAND STORES, INC., ORIENTAL)
TRADING COMPANY and DOES I-X,)
INCLUSIVE,)

Defendants,)

PLAINTIFF'S NOTICE OF VOLUNTARY DISMISSAL

COMES NOW the Plaintiff, **BOBBIE LOUISE MOSES**, Individually and
As Next Friend of **Shata Niko Moses**, Deceased, by and through her
attorneys of record, **Morris & Morris**, by Greg A. Morris, and
states:

Pursuant to Rule 41(a)(1) of the Federal Rules of Civil
Procedure, Plaintiff voluntarily dismisses without prejudice the
First, Second, Third and Fourth Causes of Action in Plaintiff's
Complaint. Said dismissal is filed without prejudice since
Defendant has not served an answer to any of these Causes of
Action filed by Plaintiff in her Complaint.

Dated: September 12, 1990.

Respectfully submitted,

MORRIS & MORRIS

By: 

Greg A. Morris, OBA # 10540
Attorney for Plaintiff
1616 South Denver
Tulsa, Oklahoma 74119
(918) 587-5514

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Plaintiff's Notice of Voluntary Dismissal was mailed to the following this 12th day of September, 1990, with sufficient postage thereon fully prepaid and affixed:

L. E. Stringer
Attorney at Law
Crowe & Dunlevy
1800 Mid-America Tower
Oklahoma City, Oklahoma 73102-8273



Greg A. Morris

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MICRO SWITCH, a division of HONEYWELL,)
a Delaware corporation,)

Plaintiff,)

vs.)

PATTY PRECISION PRODUCTS COMPANY,)
an Oklahoma corporation,)

Defendant.)

Case No. 90-C-613-C

FILED

SEP 12 1990

JACK C. SILVER, Clerk,
U. S. DISTRICT COURT,

JUDGMENT

This cause comes on for hearing on the Application of the Plaintiff for a default judgment pursuant to Rule 55 of the Federal Rules of Civil Procedure. After examining the record, the Court finds that the Complaint in the above case was filed in this Court on the 17th day of July, 1990 and that the Summons and Complaint were duly served on the Defendant, on the 6th day of August, 1990, and that no Answer or other defense has been filed by the said Defendant, and that default was entered on the 30th day of August, 1990, in the office of the Clerk of this Court, and that no proceedings have been taken by said Defendant since said default was entered.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff, Micro Switch, a division of Honeywell, have judgment against the Defendant, Patty Precision Products Company, for the sum of \$52,098.85 together with interest thereon at the rate of 6% per annum from February 25th, 1990 to date of

judgment and at the legal rate of 10.35% per annum after judgment until paid, for all of which let execution issue.

Dated this 12 day of Sept 1990.

PAUL DALE COOK

United States District Judge

APPROVED:



David W. Earman - #10279
Reynolds & Ridings
2808 First National Center
Oklahoma City, Oklahoma 73102
405/232-8131

Emeb0130p/8-27

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

*Close
Farmers
only*

VIRGIE FAYE HOLMES, the duly)
appointed Personal Representative))
of the estate of Ronald Leon)
Holmes, Sr., and his surviving)
spouse; LORRENE LOUISE HOLMES,)
surviving dependent daughter)
of Ronald Leon Holmes, Sr.;)
and VIRGIE FAYE HOLMES,)
guardian ad litem of RONALD)
LEON HOLMES, JR., surviving)
dependent son of Ronald Leon)
Holmes, Sr.,)

Plaintiffs,)

vs.)

Case No. 90-C-605-C

RUSSELL LEE BROWN; YOUNG'S)
TRUCKING, INC., a corporation;)
NORTHLAND INSURANCE)
COMPANIES; and FARMERS)
INSURANCE CO., INC.,)

Defendants.)

FILED

SEP 12 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL

This matter coming on **before** the undersigned Judge of the
United States District Court upon the Stipulation of Dismissal
presented by the Plaintiff and **agreed** to by all parties and the Court
does herewith dismiss without **prejudice** from this action the
Defendant Farmers Insurance Company, Inc.

DATED this 12 day of ~~August~~^{Sept}, 1990.



H. DALE COOK
UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 12 1996

JACK C. DUNN, CLERK
U.S. DISTRICT COURT

UNITED SIDING SUPPLY, INC.,
Plaintiff,

vs.

No. 90-C-594-C

GRADY BROTHERS, INC., a
Missouri corporation;
JACK HOKE; and RANDY GRADY,
Defendants.

ORDER

Before the Court are the motions of the defendants to dismiss. This is an action for breach of contract against Grady Brothers, Inc. and for enforcement of personal guarantees against the individual defendants. All defendants move the Court to dismiss the action based upon their lack of minimum contacts with Oklahoma.

Defendants have submitted affidavits indicating that the contract was entered into in Missouri, that the corporate defendant is incorporated in Missouri and does no business in Oklahoma, and that the individual defendants have had no contact with Oklahoma. Plaintiff has responded with an affidavit executed by one of its officers, stating that, while the contract was entered into in Missouri, defendant Randy Grady, on behalf of defendant Grady

4

Brothers, Inc., has made numerous trips into Oklahoma in order to effectuate the contract. Further, that other products were ordered by Grady Brothers, Inc. based upon phone calls from Missouri to Oklahoma. Finally, plaintiff notes that the guaranty executed by Jack Hoke contains a clause which states that "[t]he Guarantor consents to be sued in any jurisdiction in which the Debtor may be sued."

The question of whether a federal court has in personam jurisdiction over a nonresident defendant in diversity cases is determined by the law of the forum state. Yarbrough v. Elmer Bunker & Associates, 669 F.2d 614 (10th Cir. 1982). The applicable provision of Oklahoma law is 12 O.S. §2004(F), which states the following: "A court of this state may exercise jurisdiction on any basis consistent with the Constitution of this state and the Constitution of the United States." The applicable burden of proof on a motion of this type is as follows:

The plaintiff bears the burden of establishing personal jurisdiction over the defendant. Prior to trial, however when a motion to dismiss for lack of jurisdiction is decided on the basis of affidavits and other written materials, the plaintiff need only make a prima facie showing. The allegations in the complaint must be taken as true to the extent they are uncontroverted by the defendant's affidavits. If the parties present conflicting affidavits, all factual disputes are resolved in the plaintiff's favor, and the plaintiff's prima facie showing is sufficient notwithstanding the contrary presentation by the moving party.

Rambo v. Amer. Southern Ins. Co., 839 F.2d 1415, 1417 (10th Cir. 1988).

Under this standard, the Court must conclude that the plaintiff has made a prima facie showing.

The plaintiff has presented sufficient evidence as to "specific jurisdiction" (id. at 1418) over the corporation, of

sufficient contacts by Randy Grady, and of the consent clause regarding Jack Hoke for the case to proceed beyond this stage.

It is the Order of the Court that the motion of the defendants to dismiss is hereby DENIED.

IT IS SO ORDERED this 12th day of September, 1990.

A handwritten signature in cursive script, appearing to read "H. Dale Cook", written over a horizontal line.

H. DALE COOK

Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 12 1990

OIL CAPITAL LAND &
EXPLORATION CO., an
Oklahoma corporation,

Plaintiff,

vs.

FUEL RESOURCES, INC., a
Delaware corporation,

Defendant.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

Case No. 89-C-838-E

ORDER


NOW on this 11TH day of September, 1990, comes on for consideration the above styled matter and the Court, being fully advised in all premises, finds that currently pending before the Court are the Motion of Defendant to Dismiss Complaint or for Summary Judgment and the Motion of Plaintiff for Summary Judgment & to Strike Affirmative Defenses.

This Court has carefully examined the positions of the parties, including the arguments made, authorities cited and exhibits provided, and finds that Defendant's Motion to Dismiss is well taken. The Court finds as a matter of law that no binding agreement arose from the negotiations between the parties and that Plaintiff is accordingly bereft of an actionable claim for breach of contract, promissory estoppel, misrepresentation or failure to negotiate in good faith in this Court. The preliminary letters exchanged between the parties simply do not rise to the level of a binding agreement between the parties, but rather constitute an unenforceable agreement to agree in the future. See Arcadian

Phosphates, Inc. v. Arcadian Corp., 884 F.2d 69, 72 (2d Cir. 1989) citing Teachers Ins. & Annuity Ass'n v. Tribune Co., 670 F.Supp. 491 (S.D.N.Y. 1987). These preliminary letters clearly indicate that critical terms remained to be negotiated and in fact resolution on at least the effective date (an essential element in the purchase or sale of any oil and gas lease) was never reached. Although a draft Purchase and Sale Agreement was belatedly prepared in the case, the lack of execution of such draft agreement further strengthens Defendant's position. Accordingly, the Motion of Defendant to Dismiss is hereby granted.

While the Court is convinced that an appropriate resolution of this matter would be additional dismissal of Defendant's claims for Plaintiff's alleged intentional interference with Defendant's business relationship with BT Energy Corporation, a potential purchaser, the Court must reluctantly find that material issues of fact remain with regard to these claims, specifically with regard to whether the indemnification of BT was an outgrowth of Mr. Mountford's conversation with Mr. Stautberg. Thus, summary judgment cannot properly be granted as to these claims.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Motion of Defendant to Dismiss or for Summary Judgment should be and is hereby granted. The case will proceed only upon Defendant's claims for intentional interference with a business relationship, as contained in Defendant's Second and Third Counterclaims.


JUDGE JAMES O. ELLISON
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SEP 12 1990

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ROBERT LEE JONES, JR.,

Plaintiff,

vs.

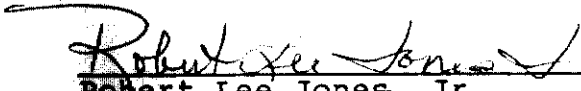
Case No. 89-C-966-E

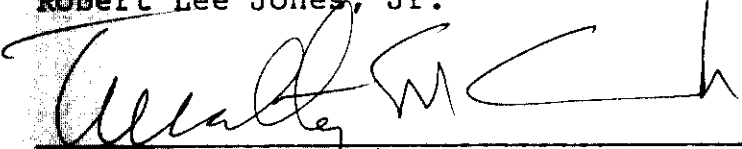
TOM POOL, Mayor of the
City of Claremore; and the
CITY OF CLAREMORE, an
incorporated municipality,

Defendants.

STIPULATION OF DISMISSAL WITH PREJUDICE

The parties to this action hereby stipulate that any and all causes of action and claims against the Defendants, Mayor Tom Pool and the City of Claremore, are hereby dismissed with prejudice.


Robert Lee Jones, Jr.


Timothy E. McCormick, Esq.
McCORMICK, WIECHMANN
& SCHOENENBERGER, P.A.
1516 South Boston, Suite 205
Tulsa, Oklahoma 74119-4013
(918) 582-3655
Attorneys for Plaintiff

John H. Lieber, OBA #5421
ELLER AND DETRICH
2727 East 21st Street
Suite 200, Midway Building
Tulsa, Oklahoma 74114
(918) 747-8900
Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 12 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

JACK F. HUBELI, E.R. SWIFT,)
BETTY F. RIPPETOE, SHIRLEY P.)
LASTER, JAMES C. O'ROURKE,)

Plaintiffs,)

“S.”

BETHLEHEM STEEL CORPORATION,
a Delaware Corporation,

Defendant.)

Nos. 87-C-394-C
87-C-415-C
87-C-416-C
87-C-421-C
87-C-422-C
(CONSOLIDATED)

O R D E R

UPON the Joint Stipulation for Dismissal With Prejudice of the parties, Plaintiffs Jack F. Hubeli, E.R. Swift, Betty F. Rippetoe, Shirley P. Laster, and James C. O'Rourke, and Defendant Bethlehem Steel Corporation, it is hereby ordered that this cause is dismissed with prejudice, each party to bear his, her, or its own costs, expenses, and attorneys' fees.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SEP 12 1990

JACK R. SILVER, CLERK
U.S. DISTRICT COURT

JAUQUETTA J. JONES,

Plaintiff,

vs.

LOUIS W. SULLIVAN, M.D.,

Defendant.

No. 87-C-233-C

ORDER

Before the Court is the plaintiff's motion for attorney fees pursuant to 42 U.S.C. §406. The amount of past-due benefits awarded to plaintiff is \$15,657.00. Counsel seeks an award of \$3,093.75. This is less than twenty-five percent of total benefits and therefore does not violate the statute. Further, defendant does not object to the amount requested.

It is the Order of the Court that plaintiff's motion for attorney fees is hereby granted in the amount of \$3,093.75.

IT IS SO ORDERED this 12th day of September, 1990.


H. DALE COOK

Chief Judge, U. S. District Court

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SEP 12 1990

JACK C. CHAVEZ, CLERK
U.S. DISTRICT COURT

BIZJET INTERNATIONAL SALES &
SUPPORT, INC.,
an Oklahoma corporation,

Plaintiff,

vs.

MULTISTATE SERVICES, INC.,
et al.,

Defendants.

No. 89-C-885-C

9-12-90

ORDER


On May 18, 1990, the Court Clerk entered default judgment against defendant Keith Smith in the amount of \$42,551.24 plus per diem interest of \$13.57 accruing from January 13, 1990 until paid.

On June 4, 1990, plaintiff filed its application to tax attorney fees and costs. No response to the application has been filed. Accordingly,

It is the Order of the Court that the plaintiff's application to tax attorney fees and costs against defendant Smith is hereby granted. Plaintiff is awarded (1) \$7,022.40 for fees and costs incurred through January 31, 1990, (2) \$2,139.98 for fees and costs incurred from February 1, 1990 - May 31, 1990 and (3) \$6,830.95 in

expenses incurred in obtaining service of process upon defendant Keith Smith.

IT IS SO ORDERED this 12th day of September, 1990.

A handwritten signature in cursive script, appearing to read "H. Dale Cook", written over a horizontal line.

H. DALE COOK

Chief Judge, U. S. District Court

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA

Plaintiff,

vs.

MARY LOU DINKINS; JOHN DOE,
Tenant; JANE DOE, Tenant;
COUNTY TREASURER, Tulsa County,
Oklahoma; BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

F I L E D

SEP 11 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 90-C-557-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 7 day
of Sept, 1990. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendants, John Doe and Jane Doe, Tenants, appear not and
should be dismissed from this action; the Defendants, Tulsa
County Treasurer, Tulsa County, Oklahoma, and Board of County
Commissioners, Tulsa County, Oklahoma, appear by J. Dennis
Semler, Assistant District Attorney, Tulsa County, Oklahoma; and
the Defendant, Mary Lou Dinkins, appears not, but makes default.

The Court being fully advised and having examined the
court file finds that the Defendant, Mary Lou Dinkins,
acknowledged receipt of Summons and Complaint on July 3, 1990;
that Defendant, County Treasurer, Tulsa County, Oklahoma,
acknowledged receipt of Summons and Complaint on June 27, 1990;
and that Defendant, Board of County Commissioners, Tulsa County,
Oklahoma, acknowledged receipt of Summons and Complaint on

June 27, 1990.

The Court further finds that Defendants, John Doe and Jane Doe, Tenants, have not been served herein, as such persons do not exist and should therefore be dismissed as Defendants herein.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, filed its Answer on July 16, 1990; that the Board of County Commissioners, Tulsa County, Oklahoma, filed their Answer on July 16, 1990; and that the Defendant, Mary Lou Dinkins, has failed to answer and her default has therefore been entered by the Clerk of this Court.

The Court further finds that on January 25, 1990, Mary Lou Dinkins filed her voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Eastern District of Missouri, Case No. 90-10037-BKC-BSS and was discharged on June 8, 1990.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Four (4), Block One (1), HOME GARDENS
FOURTH ADDITION to the City of Broken Arrow,
Tulsa County, Oklahoma, according to the
recorded Plat (also known as 1017 S. Date,
Broken Arrow, OK 74012).

The Court further finds that on October 31, 1985, the Defendant, Mary Lou Dinkins, executed and delivered to the United

States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, her mortgage note in the amount of \$37,000.00, payable in monthly installments, with interest thereon at the rate of 11.5 percent (11.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Mary Lou Dinkins, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated October 31, 1985, covering the above-described property. Said mortgage was recorded on October 31, 1985, in Book 4902, Page 2116, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Mary Lou Dinkins, made default under the terms of the aforesaid note and mortgage by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof, the Defendant, Mary Lou Dinkins, is indebted to the Plaintiff in the principal sum of \$36,320.32, plus interest at the rate of 11.5 percent per annum from October 1, 1989 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendant, Mary Lou Dinkins, in the principal sum of \$36,320.32, plus interest at the rate of 11.5 percent per annum from October 1, 1989 until judgment, plus interest thereafter at the current legal rate of 7.95 percent per annum until paid, plus the costs of this action plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums of the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, John Doe and Jane Doe, Tenants, and the County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein
in favor of the Plaintiff;

The surplus from said sale, if any, shall be deposited with the
Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from
and after the sale of the above-described real property, under
and by virtue of this judgment and decree, all of the Defendants
and all persons claiming under them since the filing of the
Complaint, be and they are forever barred and foreclosed of any
right, title, interest or claim in or to the subject real
property or any part thereof.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney

Phil Pinnell

PHIL PINNELL, OBA #7169
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

J. Dennis Semler

J. Dennis Semler
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 90-C-557-E
PP/esr

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DONALD R. MCKNIGHT, et al.,

Defendants.

SEP 11 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 90-C-692-E

ORDER

Upon the Motion of the United States of America, acting on behalf of the Secretary of Veterans Affairs, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and for good cause shown it is hereby ORDERED that this action shall be dismissed without prejudice.

Dated this 11 day of Sept, 1990.

S/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney

PETER BERNHARDT, OBA #741
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

PB/css

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE UNKNOWN HEIRS, EXECUTORS,
ADMINISTRATORS, DEVISEES,
TRUSTEES, SUCCESSORS AND
ASSIGNS OF ALBERTA BROWN a/k/a
ALBERTA NEAL HALEY BROWN,
Deceased; DONALD D. WALKER;
SHIRLEY S. WALKER; MARCUS
PARTEE, Tenant; COUNTY TREASURER,
Tulsa County, Oklahoma; and
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.

FILED

SEP 11 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 90-C-0057-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 11 day
of Sept, 1990. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Peter Bernhardt, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; and the Defendants, The Unknown
Heirs, Executors, Administrators, Devisees, Trustees, Successors
and Assigns of Alberta Brown a/k/a Alberta Neal Haley Brown,
Deceased, and Marcus Partee, Tenant, appear not, but make
default.

The Court being fully advised and having examined the
court file finds that the Defendant, County Treasurer, Tulsa
County, Oklahoma, acknowledged receipt of Summons and Complaint

on January 31, 1990; and that the Defendant, Board of County Commissioners, acknowledged receipt of Summons and Complaint on January 31, 1990.

The Court further finds that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Alberta Brown a/k/a Alberta Neal Haley Brown, Deceased, and Marcus Partee, Tenant, were served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record of Tulsa, Oklahoma, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning June 14, 1990, and continuing to July 19, 1990, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Alberta Brown a/k/a Alberta Neal Haley Brown, Deceased, and Marcus Partee, Tenant, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, The Unknown Heirs, Executors, Administrators,

Devisees, Trustees, Successors and Assigns of Alberta Brown a/k/a Alberta Neal Haley Brown, Deceased, and Marcus Partee, Tenant. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendant, County Treasurer, Tulsa County, Oklahoma, filed its Answer on February 20, 1990; that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on February 20, 1990; that the Defendants, Donald D. Walker and Shirley S. Walker, filed their Disclaimer on February 8, 1990; and that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Alberta Brown a/k/a Alberta Neal Haley Brown, Deceased, and Marcus Partee, Tenant, have failed to answer and

their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Four (4) Block Ten (10) Suburban Acres
Second Addition to the city of Tulsa, Tulsa
County, Oklahoma, according to the recorded
Plat thereof.

The Court further finds that Otis Brown and Alberta Brown a/k/a Alberta Neal Haley Brown (hereinafter referred to by either name) became the record owners of the real property involved in this action by virtue of a Warranty Deed dated October 31, 1972, from Donald E. Johnson, as Administrator of Veterans Affairs, to Otis Brown and Alberta Brown, husband and wife, as joint tenants and not as tenants in common, with full right of survivorship, the whole estate to vest in the survivor in the event of the death of either, which Warranty Deed was filed of record on November 8, 1972, in Book 4042, Page 1938, in the records of the County Clerk of Tulsa County, Oklahoma.

The Court further finds that Otis Brown died on December 26, 1972, and the subject property vested in his surviving joint tenant, Alberta Brown, by operation of law.

The Court further finds that Alberta Neal Haley Brown died on March 23, 1989, while seized and possessed of the real property being foreclosed.

The Court further finds that this is a suit brought for the further purpose of judicially determining the death of the joint tenants, Otis Brown and Alberta Brown a/k/a Alberta Neal Haley Brown and of judicially terminating the joint tenancy of Otis Brown and Alberta Brown a/k/a Alberta Neal Haley Brown.

The Court further finds that on November 6, 1972, the Defendants, Otis Brown, now deceased, and Alberta Brown, now deceased, who were then husband and wife, executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$10,000.00, payable in monthly installments, with interest thereon at the rate of 4.5 percent (4.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Otis Brown, now deceased, and Alberta Brown, now deceased, executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, a mortgage dated November 6, 1972, covering the above-described property. Said mortgage was recorded on November 8, 1972, in Book 4042, Page 1957, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Otis Brown, now deceased, and Alberta Brown a/k/a Alberta Neal Haley Brown, now deceased, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has

continued, and that by reason thereof the Defendants, Otis Brown, now deceased, and Alberta Brown a/k/a Alberta Neal Haley Brown, now deceased, are indebted to the Plaintiff in the principal sum of \$6,333.52, plus interest at the rate of 4.5 percent per annum from November 1, 1988 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$273.45 (\$20.00 docket fees, \$253.45 publication fees).

The Court further finds that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Alberta Brown a/k/a Alberta Neal Haley Brown, Deceased; Marcus Partee, Tenant; Donald D. Walker; Shirley S. Walker; and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem in the principal sum of \$6,333.52, plus interest at the rate of 4.5 percent per annum from November 1, 1988 until judgment, plus interest thereafter at the current legal rate of 7.95 percent per annum until paid, plus the costs of this action in the amount of \$273.45 (\$20.00 docket fees, \$253.45 publication fees) plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums of the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Alberta Brown a/k/a Alberta Neal Haley Brown, Deceased; Marcus Partee, Tenant; Doanld D. Walker; Shirley S. Walker; and the County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the

Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ JAMES O. ELLISON

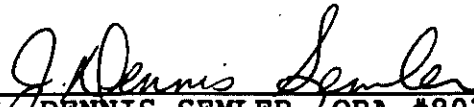
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



PETER BERNHARDT, OBA #741
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 90-C-0057-E

PB/esr

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 11 1990

JAMES R. MILLS,
Plaintiff,

vs.

ALLSTATE LIFE INSURANCE CO.,
Defendant.

No. 89-C-24-E ✓

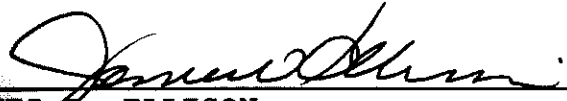
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ADMINISTRATIVE CLOSING ORDER

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within thirty (30) days that settlement has not been completed and further litigation is necessary.

ORDERED this 7th day of September, 1990.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

DONALD E. LANDRUM,
CSS 448 50 4192

Defendant,

CIVIL NO. 90-C-455 E

FILED

SEP 11 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CONSENT JUDGMENT

This matter coming on before this Court this 7 day
of Sept, 1990, and the Court being informed in the
premises and it appearing that the parties have agreed and consent to a
judgment as set forth herein; in accordance therewith;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff,
United States of America, have and recover judgment against the
Defendant, DONALD E. LANDRUM, in the principal sum of \$1281.80, plus
pre-judgment interest and administrative costs, if any, as provided by
Section 3115 of Title 38, United States Code, together with service of
process costs of \$21.20. Future costs and interest at the legal rate
of 7.95%, will accrue from the entry date of this judgment and
continue until this judgment is fully satisfied.

DATED this 7 day of Sept, 1990.

S/ JAMES O. ELLISON

U.S. DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

HERBERT N. STANDEVEN
District Counsel
Department of Veterans Affairs
Counsel for Plaintiff

AGREED By:

LISA A. SETTLE, Attorney

AGREED:

DONALD E. LANDRUM

CERTIFICATE OF MAILING

This is to certify that on the 7 day of Sept,
1990, a true and correct copy of the foregoing was mailed postage
prepaid thereon to: DONALD E. LANDRUM, 1013 West Reno, Broken Arrow, OK
74012.

LISA A. SETTLE, Attorney

Entered
1st C.A.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SEP 11 1990

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

BERTHA GOFF,

Plaintiff,

vs.

AMERICAN AIRLINES,

Defendant.

No. 90-C-450-C


ORDER

Before the Court is the Report and Recommendation of the Magistrate wherein the magistrate has recommended that defendant's motion to dismiss plaintiff's first cause of action be granted for failure of plaintiff to respond, pursuant to Local Rule 15A.

No exception or objection has been filed by the plaintiff. Accordingly the Court hereby accepts the Recommendation of the Magistrate.

It is therefore Ordered that the motion of defendant to dismiss plaintiff's first cause of action is hereby granted, pursuant to Local Rule 15(A).

IT IS SO ORDERED this 17th day of September, 1990.


H. DALE COOK
Chief Judge, U. S. District Court

entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SEP 11 1990

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

DIANE FINCH,

Plaintiff,

vs.

No. 90-C-446-C

CROWN BUICK, INC.; and
D & M PARTNERSHIP,

Defendants.

ORDER

Before the Court is the motion of defendants to dismiss plaintiff's third claim for relief.

Plaintiff, a former employee of the defendants, brings this action seeking money damages for alleged discriminatory discharge due to her sex. Plaintiff alleges that while employed by defendants she was discriminatorily treated in the work environment, terms, conditions and privileges of her employment. Plaintiff alleges defendants failed to promote her and ultimately wrongfully discharged her from employment solely because of her sex.

Plaintiff invokes federal question jurisdiction seeking a claim under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-5. In her third cause of action, plaintiff seeks pendent jurisdiction in an effort to assert a state claim under Burk v. K-Mart, 770 P.2d 24 (Okla. 1989). In relying on Burk, plaintiff alleges her discharge, based upon her sex, was tortious under state

20

law. Plaintiff contends that sex discrimination is contrary to the clear mandate of public policy of the State of Oklahoma.

In Burk, the Oklahoma Supreme Court stated that it adopted the exception to the terminable-at-will doctrine in a narrow class of cases. Id. at 28. This Court in White v. American Airlines, Inc., 82-C-755-C (September 15, 1987) recognized a viable claim for the tort of wrongful discharge wherein plaintiff asserted he was discharged for his refusal to commit perjury. The act of committing perjury is against public policy as codified in Oklahoma statutory law. However, there is no independent cause of action for a person who is discharged for refusing to commit perjury.

Where the law does not provide a remedy for discharge which violates public policy, the court in Burk recognized a remedy and framed it as a cause of action for tortious discharge. Where the law provides a remedy, there is no need for an implied-in-law parallel remedy. As this Court has stated in Carlis v. Sears Roebuck, 89-C-184-C, (July 7, 1989) to hold otherwise would result in the public policy exception being asserted in an expansive class of cases. Such a result is directly contrary to the Oklahoma Supreme Court's language in Burk.

In the case sub judice plaintiff has an adequate remedy under Title VII. Burk applies when a plaintiff has an inadequate remedy although the alleged harm is in clear violation of public policy as articulated by constitutional, statutory or decisional law.

Accordingly, it is the Order of the Court that the motion of defendants to dismiss plaintiff Diane Finch's third cause of action is hereby GRANTED.

Accordingly, it is the Order of the Court that the motion of defendants to dismiss plaintiff Diane Finch's third cause of action is hereby GRANTED.

IT IS SO ORDERED this 17th day of September, 1990.


H. DALE COOK

Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D

SEP 10 1990

VIRGIL A. COLLINS,
Plaintiff,

V.

UNITED STATES OF AMERICA,
Defendant/Counterclaim,

V.

MAX A. HEIDENREICH,
Additional Defendant on
Counterclaim.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

Case No. 89-C-729-E

JUDGMENT

On August 21, 1990, a jury returned a verdict in favor of the United States upon its counterclaim against Max A. Heidenreich in the above referenced matter. In accordance with that verdict, judgment is hereby entered in favor of the United States, and against Max A. Heidenreich, in the amount of \$46,847.06 plus interest thereon as allowed by law accruing from the date of assessment, January 9, 1989.

Dated: 9/7/90

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Entered

HILLCREST MEDICAL CENTER,

Plaintiff,

vs.

Case No. 89-C-1043-C

MARY JO HOBBS, a/k/a
MARY JO ROZ, a/k/a
MARY JO BURNS,

Defendant/
Third Party Plaintiff,

vs.

INDEPENDENCE BLUE CROSS,
a Pennsylvania corporation,
and GROUP HEALTH SERVICE OF
OKLAHOMA, INC., d/b/a BLUE
CROSS/BLUE SHIELD OF OKLAHOMA,
an Oklahoma corporation,

Third Party Defendants.

STIPULATION OF DISMISSAL

COMES NOW the Defendant and Third Party Plaintiff, Mary Jo Hobbs, a/k/a Mary Jo Roz, a/k/a Mary Jo Burns, and hereby dismisses the Petition filed in the above-styled and numbered cause with prejudice as to Third Party Defendants Independence Blue Cross and Group Health Service of Oklahoma, Inc., d/b/a Blue Cross/Blue Shield of Oklahoma.

Respectfully submitted,

SNEED, LANG, ADAMS,
HAMILTON & BARNETT

By

[Signature]
G. Steven Stidham, O.B.A. #8633
2300 Williams Center Tower II
Two West Second Street
Tulsa, Oklahoma 74103
(918) 583-3145
Attorneys for Plaintiffs

CHAPEL, RIGGS, ABNEY,
NEAL & TURPEN

By M. D. Bedingfield
M. D. Bedingfield
502 West Sixth Street
Tulsa, Oklahoma 74119
(918) 587-3161
Attorneys for Third Party
Defendants

CERTIFICATE OF MAILING

5th I, G. Steven Stidham, do hereby certify that on the
day of September 1990, I caused to be mailed a true and
correct copy of the above and foregoing instrument, proper postage
thereon prepaid, to Mark G. Robb, Works, Lentz & Pottorf, Inc.,
Mapco Plaza Building, 1717 South Boulder, Suite 200, Tulsa,
Oklahoma 74119.

G. Steven Stidham
G. Steven Stidham

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

L. BERNADETTE SMITH,

Plaintiff,

vs.

JAMES R. O'CARROLL, M.D. and
PRINCIPAL MUTUAL LIFE INSURANCE
COMPANY,

Defendants.

Case No. 90-C-418-C

FILED

SEP 7 1990

ORDER FOR DISMISSAL

Jack C. Silver, Clerk
U.S. DISTRICT COURT

NOW on this 7 day of September, 1990, this matter comes before me, the undersigned Judge of the United States District Court, pursuant to the joint Application of the parties to dismiss, with prejudice, the above-styled action and complaint.

Pursuant to said Application, the Court finds that said request should be granted.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the above-styled action and complaint should be dismissed with prejudice.


JUDGE OF THE U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

NANCY WILMOTH,

Plaintiff,

v.

EPWORTH UNITED METHODIST CHURCH,
a body corporate, d/b/a/
EPWORTH DAY CARE CENTER;
CHARLES HOOSIER; VICKIE BARNES;
PAM MCNEIL; and WILMA TOWNSELL,

Defendants.

Case No. 90-C-411-C

FILED

SEP 7 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL

This cause having come before this Court on the Joint Application for Dismissal with Prejudice of the parties, and this Court being fully advised in the premises, and the parties having stipulated and the Court having found that the parties have reached a private settlement of the individual claims of Plaintiff, and that such claims should be dismissed with prejudice, it is, therefore,

ORDERED, ADJUDGED AND DECREED that the Complaint of Plaintiff, together with any causes of action asserted therein, be and hereby are dismissed with prejudice, with each party to bear its own costs.

So Ordered this 7 day of Sept, 1990.
(Signed) H. Dale Cook

United States District Judge

APPROVED AS TO FORM AND CONTENT:

Eugene A. [Signature]
Attorney for Plaintiff

Mary S. [Signature]
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 7 1990

Jack C. Silver, Clerk
U. S. DISTRICT COURT

PROVIDENCE OIL AND GAS
CORPORATION, and WHITMAR
EXPLORATION COMPANY,

Plaintiffs,

v.

ANR PIPELINE COMPANY

Defendant.

Case No. 88-C-1595-B

ADMINISTRATIVE CLOSING ORDER

On the representations from counsel for both sides that the parties have reached a settlement and compromise, it is ordered that the clerk administratively terminate this action in his records without prejudice to the rights of the parties to reopen the proceeding for good cause shown, for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation of plaintiffs' claim.

If the parties have not reopened this case within sixty (60) days of this date for the purpose of dismissal pursuant to the settlement compromise, plaintiffs' action and shall be deemed to be dismissed.

IT IS ORDERED this 7th day of Sept., 1990.

S/ THOMAS R. BREIT

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP -7 1989

AMERICAN BEDDING CORPORATION,
Plaintiff,
vs.
LA QUINTA MOTOR INNS, INC.,
Defendant.

Case No. 89-C-720-B

U.S. DISTRICT CLERK
NORTHERN DISTRICT OF OKLAHOMA

**STIPULATION OF DISMISSAL WITH PREJUDICE
OF PLAINTIFF'S CLAIMS AND DEFENDANT'S COUNTERCLAIMS**

COMES NOW American Bedding Corporation, Plaintiff, and La Quinta Motor Inns, Inc., Defendant, pursuant to the provisions of FRCP 41(a)(1)(ii) and FRCP 41(c) and stipulate to the Dismissal With Prejudice of their claims for relief, each against the other, as follows:

1. Plaintiff dismisses with prejudice its claims for relief alleged in Plaintiff's Complaint and all Amended Complaints, and
2. Defendant dismisses with prejudice its claims for relief alleged in Defendant's Counterclaim and all Amended Counterclaims.

The Plaintiff and the Defendant stipulate that each party shall bear its own attorney's fees in this action and that this Dismissal is entered without the imposition of any terms or conditions which the Court is authorized to award pursuant to FRCP 41(a)(2).

AMERICAN BEDDING CORPORATION
PLAINTIFF

By: 
James Lawrence, President

CLARK & WILLIAMS

By: Wendell W. Clark
Wendell W. Clark, OBA # 1747
5416 South Yale, Suite 600
Tulsa, Oklahoma 74135
(918) 496-9200

ATTORNEY FOR PLAINTIFF

LA QUINTA MOTOR INNS, INC.

By: Marilyn K. Boldrick
Marilyn K. Boldrick
Vice President-General
Counsel

PRAY, WALKER, JACKMAN,
WILLIAMSON & MARLAR

By: Kevin M. Abel
Kevin M. Abel, OBA #104
900 ONEOK Plaza
Tulsa, Oklahoma 74103
(918) 584-4136

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing document was mailed on this 5th day of September, 1990, with proper postage fully paid thereon, to the following:

Mr. Wendell W. Clark
CLARK & WILLIAMS
5416 South Yale
Suite 600
Tulsa, Oklahoma 74135

Kevin M. Abel
Kevin M. Abel, OBA #104

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAMIE COPPIN, Administratrix of the)
Estate of James A. Eudy, deceased,)

Plaintiff,)

vs.)

WYMATH C. RENFROW, and)
SCOT W. JOHNSON,)

Defendants.)

No. 90 C-200-B

FILED
SEP 7 1990
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL AND REMAND

Upon application of the plaintiff, it is hereby ORDERED:

1. The above matter is ~~dismissed~~ as to the defendant, Wymath C. Renfrow.

2. The above matter is hereby remanded to the District Court of Tulsa County, Oklahoma, where the same was previously pending as cause number CJ-90-0748.

S/ THOMAS R. BREY

JUDGE OF THE U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

IN RE:

CHASE EXPLORATION
CORPORATION,

Debtor.

VAIL ENERGY CORP. and
WILLIAM R. GRIMM,

Plaintiffs/Appellees,

v.

WILLIAMS NATURAL GAS
COMPANY,

Defendant/Appellant.

Bky. Case No. 82-00454-W
(Chapter 11)

Adv. No. 89-0123-W

Case No. 89-C-356-C

FILED

SEP 7 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

Now before the court is the **appeal** of Williams Natural Gas Company ("Williams") of an Order of the Bankruptcy Court entered April 17, 1989, which granted a preliminary injunction enjoining Williams from **prosecuting** a prior action in the United States District Court for the Northern District of **Texas**, Dallas Division, and requiring Williams to purchase a specific quantity of natural gas from plaintiff Vail Energy Corporation ("Vail") and denied Williams' motion to **dismiss for lack** of subject matter jurisdiction.

The facts are as follows. On **March 23, 1989**, Williams filed an action in the United States District Court for the Northern **District** of Texas ("Texas Action"), naming Vail as the defendant. Williams sought an order **declaring** that performance of its obligations under a natural gas purchase contract **between** the parties ("Subject Contract") executed on October 8, 1978 had been excused by **impossibility** of performance, frustration of purpose,

and commercial impracticability under § 2-615 of the Uniform Commercial Code.

On April 4, 1989, Vail (doing business as EnMark Gas Corporation) received a notice from Williams that, due to the combined effect of federal and state regulatory orders, the purchase by Williams of all gas available under the Subject Contract had become impracticable, and that from April, 1989, until further notice, Williams would only purchase 74 per cent of the natural gas it was obliged to take under the Subject Contract. Vail claimed the interest of the seller under the Subject Contract pursuant to an assignment to Vail from Chase Exploration Corporation, a debtor in a Chapter 11 Bankruptcy Case in the Northern District of Oklahoma, No. 82-00454-W.

On April 6, 1989, plaintiffs Vail and William R. Grimm ("Grimm") filed this adversary proceeding against Williams, seeking an injunction to compel Williams to purchase natural gas from Vail and an award of damages for anticipatory repudiation of contract, breach of the duty of good faith, fraud, tortious breach of contract, and abuse of process. Plaintiffs sought a temporary restraining order to enjoin Williams from failing to perform its obligations under the Subject Contract, prosecuting the Texas Action, and terminating the Subject Contract. The application was granted ex parte and Williams was enjoined as requested. A hearing on a request for preliminary injunction was set for April 12, 1989. Williams objected to the jurisdiction of the Bankruptcy Court, but the Bankruptcy Court found that it was empowered to act in the proceeding pursuant to 28 U.S.C. §§ 157 and 1334 and granted the preliminary injunction requested by Vail and Grimm. The parties thereafter submitted an agreed order, in which Williams reserved the right to appeal based upon the lack of jurisdiction in the Bankruptcy Court over this

proceeding. This appeal followed.

Under the Plan of Reorganization ("Plan") in the Bankruptcy case involving Chase Exploration Company, Case No. 82-00454-W, plaintiff Grimm is the trustee of the Creditor Trust, which holds approximately eight per cent of the shares of common stock of plaintiff Vail on behalf of the unsecured creditors of the bankruptcy debtors. Williams, as a holder of an allowed unsecured claim against the debtor, is one of the beneficiaries of the Creditor Trust. Grimm is also the trustee of the debtor's estate with a continuing obligation to ensure that payments received by the estate from Vail are distributed to various priority claimants of the estate.

As already stated, Vail owns certain assets once part of the debtor's estate, including the Subject Contract. By virtue of the assignment of the seller's rights under the Subject Contract to Vail, Vail is now the sole entity having any contractual relationship with Williams. Neither Grimm, the debtor's estate, nor the Creditor Trust has any contractual rights under the Subject Contract. As trustee of the debtor's estate, Grimm is a creditor of Vail, and as trustee of the Creditor Trust, Grimm is a shareholder of Vail, whose only interest in the contract is to see that Vail is paid.

The issue in this appeal is whether the Bankruptcy Court had jurisdiction over the parties to grant the preliminary injunction. Bankruptcy Rule 8013 sets forth a "clearly erroneous" standard for appellate review of bankruptcy rulings with respect to findings of fact. In re: Morrissey, 717 F.2d 100, 104 (3rd Cir. 1983). However, this "clearly erroneous" standard does not apply to review of mixed questions of law and fact, which are subject to the de novo standard of review. In re: Ruti-Sweetwater, Inc., 836 F.2d

1263, 1266 (10th Cir. 1988); In re: Mullett, 817 F.2d 677, 679 (10th Cir. 1987). This appeal challenges the legal conclusion drawn from the facts presented at trial, so de novo review is proper.

Williams argues that the Bankruptcy Court did not have jurisdiction under 28 U.S.C. § 1334(b), which states that the federal district court has original, but not exclusive jurisdiction, "of all civil proceedings arising under title 11 or arising in or related to cases under title 11." Williams alleges that Vail is the assignee of contract rights formerly owned by the debtor and claims by such an assignee are not "related to" the bankruptcy. Williams also claims that Grimm has no standing to bring this case in the Bankruptcy Court, because he is a trustee of the Creditor Trust and a shareholder of Vail, so lacks standing to prosecute a claim of Vail in an action in which Vail is a party. Williams also alleges that Grimm has no standing to enforce the contract between Vail and Williams as an assignor of the contractual rights now possessed by Vail, and has no standing to seek to enforce Vail's contractual rights as a creditor of Vail. Williams claims that, under Article 11 of the Plan, the Bankruptcy Court's jurisdiction expired when the Plan was substantially consummated on April 8, 1988, as defined in Article 4, and the Bankruptcy Court's retained jurisdiction under the Plan was never invoked.

Vail and Grimm claim that the Bankruptcy Court retained jurisdiction under the Plan to hear certain matters and claims, including the Williams contract dispute, involving the principle asset of Chase, under Article 11 of the Plan, and that the Plan has not been substantially consummated, as all holders of claims have not been paid. They allege that the adversary proceeding brought by Vail and the trustee was a "core proceeding" within

the parameters of 28 U.S.C. § 157 and therefore the Bankruptcy Court had jurisdiction.

A bankruptcy court must determine whether a proceeding is a core proceeding or a related proceeding under 28 U.S.C. § 157 before it may render a decision concerning a matter. The Bankruptcy Amendments and Federal Judgeship Act of 1984 provided a list of "core proceedings" which is not meant to be exclusive in § 157(b)(2), which includes matters concerning the administration of the estate and other proceedings affecting liquidation of the estate's assets or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury, tort, or wrongful death claims. The term "core proceeding" was not specifically defined, and the outer limits of the definition have been provided by the courts.

The Supreme Court in Northern Pipeline Construction Company v. Marathon Pipe Line Company, 458 U.S. 50 (1982), held that Congress' broad grant of jurisdiction to the bankruptcy courts was unconstitutional because Article I courts were allowed to hear controversies that should be heard by Article III courts. The Court held that state-created rights antecedent to a reorganization petition could not be heard by a bankruptcy court. Many courts have followed a restrictive analysis of the term "core proceeding" as a result of the Northern Pipeline case. See In re Standard Metals Corp., 97 B.R. 593, 595 (Bkr.Ct. Colo. 1988) (court found that agreement in dispute was executed as part of the bankruptcy and formed a focal point for generating the plan of reorganization, so jurisdiction of bankruptcy court was proper).

In Pacor v. Higgins, 743 F.2d 984, 994-996 (3rd Cir. 1984), the court found that the bankruptcy court had no jurisdiction over a claim between two parties which would

not affect the legal rights, liabilities, or course of action of the debtor, even though the resolution of the claim would create a contingent liability for the debtor's estate. The court concluded that such a claim was not "related to" the Title 11 case and was thus outside the district court's jurisdiction under 28 U.S.C. § 1334(b). The court looked at whether the outcome of the proceeding could conceivably have any effect on the bankruptcy estate, by altering the debtor's rights, liabilities, options, or freedom of action either positively or negatively or impacting the handling and administration of the estate. The court emphasized that "the mere fact that there may be common issues of fact between a civil proceeding and a controversy involving the bankruptcy estate does not bring the matter within the scope of section 1471(b). Judicial economy itself does not justify federal jurisdiction." *Id.* at 994.

The Tenth Circuit has found that claims by the assignee of a bankruptcy debt are not "related to" the bankruptcy and are thus not within the bankruptcy court's jurisdiction. Boise City Farmers Co-op v. Palmer, 780 F.2d 860 (10th Cir. 1985). In Boise City, the plaintiff maintained that a Chapter 11 reorganization plan assigned to it all the claims of the debtor, including a state-law claim against former officers and directors of the debtor, and therefore this claim could be asserted in the debtor's bankruptcy case. The Court of Appeals disagreed, saying the adversary proceeding "is not sufficiently related to its original bankruptcy proceeding to confer jurisdiction upon the bankruptcy court." *Id.* at 867.

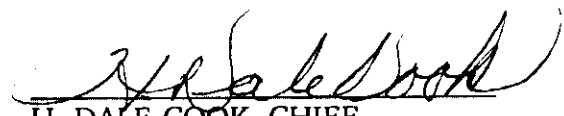
The court in In re Almarc Corp., 94 B.R. 361, 365 (E.D.Penn. 1988), emphasized that "to the extent the outcome of a dispute ... would have no conceivable effect upon the administration of the bankruptcy case, then a bankruptcy court possesses no jurisdiction

to hear it, whatever the language of a confirmed plan." The court cited case law supporting this conclusion and finding that a bankruptcy court cannot obtain jurisdiction "merely by inserting a provision in the plan or order of confirmation reserving jurisdiction." Id.

The court in In re Kolinsky, 100 B.R. 695, 701 (S.D.N.Y. 1989), concluded that an action by a debtor in possession to collect a post-petition debt arising from the sale of assets would be a matter concerning the estate and thus a core proceeding even if it depended on state law. But if the debtor was a shareholder, the court found he did not have standing to assert claims alleging wrongs to the corporation in his own name. The court found that, because the contractual dispute at issue would "affect the amount of property available for distribution to the creditors of a bankruptcy estate or the allocation of property among such creditors, [and] the outcome could alter the debtor's rights or liabilities," the civil proceeding was related to the bankruptcy case and could be heard by the bankruptcy court. Id. at 702.

The court concludes that the contract rights involved here were created by state law, independent of and antecedent to the reorganization petition that conferred jurisdiction on the bankruptcy court. The issue does not affect legal rights of the debtor or its creditors or impact the administration of the estate. No jurisdiction could properly be retained under the Plan by the Bankruptcy Court. Therefore the court finds that the Bankruptcy Court did not have jurisdiction to grant the preliminary injunction, as this was not a core or non-core proceeding relating to the bankruptcy. The Order of the Bankruptcy Court entered April 17, 1989 is hereby vacated.

Dated this 6th day of September, 1990.


H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

FILED

SEP 7 1990

Jack C. Silver, Clerk
U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ELMO D. SEITZ,

Plaintiff,

v.

SECRETARY OF HEALTH AND HUMAN
SERVICES,

Defendant.

89-C-461-B ✓

ORDER

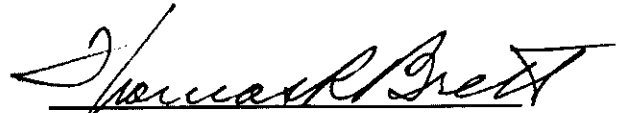
The Court has for consideration the Report and Recommendation of the United States Magistrate filed July 3, 1990 in which the Magistrate recommended that the decision of the ALJ be reversed, and remanded for further consideration.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the United States Magistrate should be and hereby is adopted and affirmed.

It is, therefore, Ordered that the decision of the ALB is reversed, and the case remanded for further consideration, in accord with the Report and Recommendation of the United States Magistrate.

Dated this 7th day of Sept., 1990.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 7 1990

THRIFTY RENT-A-CAR SYSTEM,)
INC., an Oklahoma Corporation,)
Plaintiff,)
vs.)
FT. WAYNE CAR RENTAL, INC.,)
A Foreign Corporation; and)
CHARLES E. DOWNEY, an)
individual,)
Defendants.)

Jack C. Silver, Clerk
U. S. DISTRICT COURT

Case No. 90-C-362-B

JUDGMENT

NOW ON this 7th day of Sept., 1990, the Court finds that the Defendants, Ft. Wayne Car Rental, Inc. and Charles E. Downey, have made an offer of judgment pursuant to Rule 68 of the Fed. R. Civ. P. dated August 9, 1990 which was accepted by the Plaintiff, Thrifty Rent-A-Car System, Inc. Accordingly, it is ORDERED, ADJUDGED AND DECREED that judgment is hereby entered in favor of Thrifty Rent-A-Car System, Inc. and against Ft. Wayne Car Rental, Inc. and Charles E. Downey, jointly and severally, on all counts contained in Plaintiff's Complaint in the total amount of THIRTY THOUSAND DOLLARS (\$30,000.00), which amount includes all damages, attorney fees, prejudgment interest and costs, plus post-judgment interest at the rate of 7.88% per annum until paid. Judgment is also hereby entered in favor of Thrifty Rent-A-Car System, Inc. and against Ft. Wayne Car Rental,

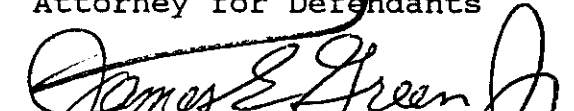
Inc. and Charles E. Downey on the Defendants' Counterclaims herein,
with each party to bear its own attorney fees and costs.

S/ THOMAS R. BRETT

United States District Judge

APPROVED AS TO FORM:


Robert Owen Vegeler
Attorney for Defendants


James E. Green, Jr.
Attorney for Plaintiff

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 7 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No.

TWENTY-FIVE THOUSAND DOLLARS
(\$25,000.00)
IN UNITED STATES CURRENCY,

Defendant.

90-8-7-1-0

AGREED JUDGMENT OF FORFEITURE

IT NOW APPEARS that the forfeiture proceeding herein has been fully compromised and settled. Such settlement more fully appears by the written Stipulation For Compromise entered into by and between Larry Gullekson and the United States of America on the 28th day of August, 1990, and filed herein, to which Stipulation for Compromise reference is hereby made and is incorporated herein.

It further appearing that no claims to said property have been filed since such property was seized, and that no other person has any right, title, or interest in the defendant property.

NOW, THEREFORE, on motion of Catherine J. Depew, Assistant United States Attorney for the Northern District of Oklahoma, and with the consent of Larry Gullekson, it is

ORDERED AND DECREED that the defendant \$25,000.00 in United States Currency, the defendant in this action, be, and hereby is, condemned as forfeited to the United States of America and shall remain in the custody of the United States Marshal for disposition according to law.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

CJD/ch
00861

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 7 1980

BRUNSWICK CORPORATION,

Plaintiff

vs.

SPINIT REEL CO., et al.

Defendants

Jack C. Silver, Clerk
U.S. DISTRICT COURT

Case No. 83-C-253-E

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, Brunswick Corporation, and the Defendants, Spinit Reel Company, and Don McIntire, and jointly dismiss all claims pending before this Court against each other with prejudice.

WHEREFORE, the Plaintiff and Defendants respectfully request this Court enter its Order dismissing all claims of all parties with prejudice.

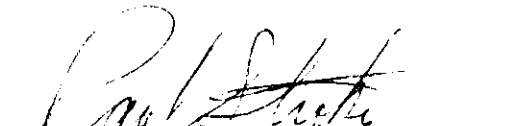
FOR BRUNSWICK CORPORATION:

JONES, GIVENS, GOTCHER & BOGAN

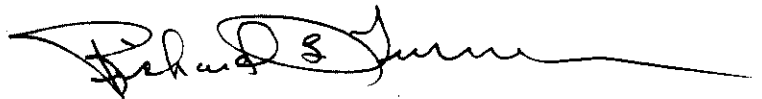


C. Michael Copeland, OBA 13261
3800 First National Tower
Tulsa, OK 74103-4309
(918) 581-8200

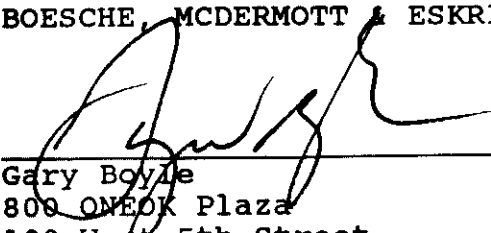
FOR DEFENDANT SPINIT REEL CO.:



Paul Strokey, President of
Spinit Reel Company

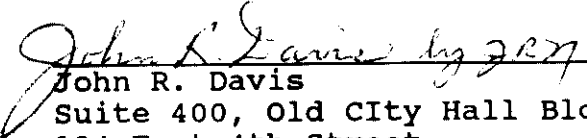


BOESCHE, McDERMOTT & ESKRIDGE



Gary Boyle
800 ONEOK Plaza
100 West 5th Street
Tulsa, OK 74103

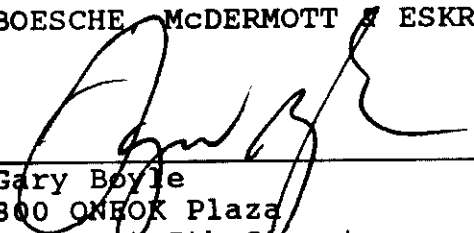
NICHOLS, WOLFE, STAMPER, NALLY
& FALLIS, INC.



John R. Davis
Suite 400, Old City Hall Bldg.
124 East 4th Street
Tulsa, OK 74103

FOR DEFENDANT DON MCINTIRE:

BOESCHE, McDERMOTT & ESKRIDGE



Gary Boyle
800 ONEOK Plaza
100 West 5th Street
Tulsa, OK 74103

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FIRST FINANCIAL INSURANCE COMPANY,
an Illinois Corporation,

Plaintiff,

vs.

ZYN CORP., INC., d/b/a THE PALLADIUM;
JOE AL KITCHELL, III; STEVE KITCHELL,
NILS ANDERSON, a/k/a CHIP ANDERSON;
FRANK EUGENE BOLING, a/k/a JIM SLANKARD;
JOSE LEON ORDANEZ, a/k/a JOSE SANTANA; and
SCOTT ROCHON,

Defendants.

Case No. 90 C 166-C ✓

FILED

SEP 6 1990 *hm*

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER GRANTING SUMMARY JUDGMENT

This matter comes on for hearing ~~this~~ 28th day of August 1990 upon Plaintiff's Motion for Summary Judgment, which was filed on August 1, 1990. The Court finds that the Plaintiff, First Financial Insurance Company ("First Financial") brought this declaratory judgment action seeking resolution of certain obligations that it contends it does not owe under a policy of insurance to its insured and the employees of its insured. The insurance policy is hereinafter referred to as "the Policy."

In its Motion for Summary Judgment, First Financial requests judgment that there is no coverage or duty to defend under the Policy for injuries or damages giving rise to claims alleged in five state court actions. These state court actions ("the Actions"), all of which have been filed in the District Court in and for Tulsa County, State of Oklahoma, are:

- a. Thomas Fine v. Joe Al Kitchell, et.al., case no. CJ-89-02856;
- b. Travis Henderson v. Joe Al Kitchell, et.al., case no. CJ-89-02855;
- c. Cameron Thomas Brown v. The Zyn Corporation, et.al., case no. CJ-90-01606;
- d. Daniel D. McGuire v. Zyn Corp. Inc., et.al., case no. CJ 90-0390; and

e. Lorrie James v. Michael McClellan and Zyn Corp., d/b/a/ The Palladium, case no. CJ 90-2163.

The Defendants Zyn Corp., Inc., d/b/a **The Palladium**, Joe Al Kitchell, III, and Steve Kitchell, insureds under the Policy, admit that the Policy does not provide coverage for injuries or damages that arise out of assault and battery or for punitive damages, and further admit that the employees are not persons insured under the Policy. However, they maintain that First Financial still has a duty to defend them under the Policy until judgments are rendered in the Actions.

The Plaintiff argues that, based on the express terms of the Policy, there is no insurance coverage for injuries or damages arising out of assault and battery, and that all claims for injuries or damages in the Actions arise out of assault and battery; therefore, there is no duty to defend or duty to indemnify the Defendants Zyn Corp., Inc., Joe Al Kitchell, III, and Steve Kitchell with respect to the injuries or damages giving rise to the claims alleged in the Actions.

The Policy provides coverage as follows:

The company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of

- A. bodily injury or
- B. property damage

to which this insurance applies, caused by an occurrence and arising out of the ownership, maintenance or use of the insured premises and all operations necessary or incidental thereto, and the company shall have the right and duty to defend any suit against the insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the company shall not be obligated to pay any claims or judgment or to defend any suit after the applicable limit of the company's liability has been exhausted by payment of judgments or settlements.

"Occurrence" is defined in the Policy as "an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured."

The Policy also contains an assault and battery exclusion, which provides:

It is agreed and understood that this insurance does not apply to bodily injury or property damage arising out of assault and battery or out of any act or omission in connection with the prevention or suppression of such acts, whether caused by or at the instigation or direction of the insured, his employees, patrons or any other person.

The Court finds that, based on the clear terms of the Policy, there is no coverage for the injuries or damages giving rise to the claims alleged in the Actions, and hence there is no duty to defend the Defendants in the Actions. Summary judgment thus should be granted for the Plaintiff. The duty to defend is expressly tied to injuries or damages only to which insurance applies, and there is no insurance for bodily injury or damages arising out of assault and battery.

The Court further finds that Defendant Nils Anderson, a/k/a Chip Anderson, was duly served with Plaintiff's Motion for Summary Judgment on August 3, 1990; that Scott Rochon was duly served with Plaintiff's Motion for Summary Judgment on August 2, 1990; and that Defendant Frank Eugene Boling, a/k/a Jim Slankard was duly served with Plaintiff's Motion for Summary Judgment on August 14, 1990. See copy of Return Receipts, attached. None of these Defendants has filed a response, nor requested an extension of time to file a response. The Court therefore deems the Motion confessed pursuant to Local Court Rule 15 (A).

The Court further finds that Defendant Jose Leon Ordanez was duly served with Summons and the Second Amended Complaint but has failed to respond or plead otherwise and that the Plaintiff has moved for default judgment against him. The motion for default judgment should be granted.

The Court further finds that the Plaintiff and Defendants have consented to review of this matter by the United States Magistrate and have waived appeal to the District Court under 28 U.S.C. § 636(c)(3).

Based upon the above facts and findings, the Court ORDERS, ADJUDGES AND DECREES that Plaintiff First Financial Insurance Company's Motion for Summary Judgment is


GRANTED against Defendants Zyn Corp., Inc., d/b/a The Palladium, Steve Kitchell, Joe Al Kitchell, III, Nils Anderson, Frank Eugene Boling and Scott Rochon and that:

1. There is no insurance coverage under the Policy issued by the Plaintiff, First Financial Insurance Company, to the Defendants, Zyn Corp., Inc., d/b/a The Palladium, Joe Al Kitchell, III, and Steve Kitchell for the injuries or damages giving rise to the claims alleged in the Actions. There is no duty on the part of First Financial to defend the Actions or to indemnify any Defendant in the Actions for any damages that may be awarded against any of those Defendants.

2. The employees sued in the Actions, and named herein as Defendants are Nils Anderson, Frank Eugene Boling, Jose Leon Ordanez and Scott Rochon. These employees are not persons insured under the Policy. First Financial Insurance Company has no duty to defend them in the Actions, or to indemnify them or the insureds for their acts should a judgment be entered against these employees or the insureds.

3. The claims for punitive damages in the Actions are excluded from coverage under the Policy. 4. The motion for default judgment against Jose Leon Ordanez is granted.

DATED this 5th day of September 1990.


JOHN LEO WAGNER
UNITED STATES MAGISTRATE

COMFORT, LIPE & GREEN

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

2100 MID-CONTINENT TOWER

401 SOUTH BOSTON AVENUE

TULSA, OKLAHOMA 74103

(918) 599-9400

FAX (918) 599-9404

WRITER'S DIRECT DIAL NUMBER

(918) 599-1921

RICHARD E. COMFORT
LARRY B. LIPE
JAMES E. GREEN, JR.
RICHARD A. PASCHAL
JIM F. GASSAWAY
KEVIN T. GASSAWAY
TIMOTHY T. TRUMP
NANCY GLISAN GOURLEY
JULIE GRIFFITH BUCKLEY
FRANCES J. STANTON
MELODIE FREEMAN-BURNEY
KATHLEEN BLISS ADAMS

August 30, 1990

HAND DELIVERED

Bert C. McElroy
201 West 5th Street, #460
Tulsa, Oklahoma 74103

Re: First Financial Insurance Co. v. Zyn Corp., et al.
Case No. 90-C 166 C

Dear Bert:

Enclosed please find a copy of the Order Granting Summary Judgment. If you do not have any questions or comments I will file this on Tuesday, September 4, 1990.

Very truly yours,



Kathleen Bliss Adams

KBA:llm

Enclosure

COMFORT, LIPE & GREEN

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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Very truly yours,



Kathleen Bliss Adams

KBA:llm

Enclosure

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.
Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☒ Show to whom delivered, date, and addressee's address. (Extra charge) 2. ☐ Restricted Delivery (Extra charge)

3. Article Addressed to:
Nils Anderson
7935 East 60th Place, #86-3
Tulsa, Ok 74145

4. Article Number
P 551 578 671

Type of Service:
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee
X

6. Signature — Agent
X *Angela Diller*

7. Date of Delivery
8-3-90

8. Addressee's Address (ONLY if requested and fee paid)

PS Form 3811, Apr. 1989 DOMESTIC RETURN RECEIPT

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.
Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☒ Show to whom delivered, date, and addressee's address. (Extra charge) 2. ☐ Restricted Delivery (Extra charge)

3. Article Addressed to:
Frank E. Boling
507 E. Freeport
Broken Arrow, OK 74012

4. Article Number
P 551 578 672

Type of Service:
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee
X

6. Signature — Agent
X *James Dallis*

7. Date of Delivery
8/14/90

8. Addressee's Address (ONLY if requested and fee paid)
Same as above

PS Form 3811, Apr. 1989 DOMESTIC RETURN RECEIPT

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.
Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☒ Show to whom delivered, date, and addressee's address. (Extra charge) 2. ☐ Restricted Delivery (Extra charge)

3. Article Addressed to:
Scott Roachon
1409 South Willow
Broken Arrow, OK 74012

4. Article Number
P 551 578 673

Type of Service:
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee
X *[Signature]*

6. Signature — Agent
X *[Signature]*

7. Date of Delivery
8-2

8. Addressee's Address (ONLY if requested and fee paid)

PS Form 3811, Apr. 1989 DOMESTIC RETURN RECEIPT

United States District Court
NORTHERN OKLAHOMA
DISTRICT OF

FIRST FINANCIAL INSURANCE COMPANY,
an Illinois corporation, SUMMONS IN A CIVIL ACTION

v.

CASE NUMBER: 90-C 166 C

ZYN CORP., INC., d/b/a THE PALLADIUM;
JOE AL KITCHELL, III; STEVE KITCHELL;
NILS ANDERSON, a/k/a CHIP ANDERSON;
FRANK EUGENE BOLING, a/k/a JIM SLANKARD;
JOSE LEON ORDANEZ, a/k/a JOSE SANTANA; and
SCOTT ROCHON

FILED

JUL 11 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

TO: (Name and Address of Defendant)

Jose Ordanez
6440 South 82nd East Avenue
Tulsa, Oklahoma 74133

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Larry Lipe, OBA #5451
Kathleen Bliss Adams, OBA #13625
2100 Mid-Continent Tower
401 South Boston Avenue
Tulsa, Oklahoma 74103
(918) 599-9400

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Jack C. Silver, Clerk

JUN 29 1990

CLERK

DATE

BY DEPUTY CLERK

ll Yester

RETURN OF SERVICE

Service of the Summons and Complaint was made by me¹

DATE

July 9, 1990

NAME OF SERVER

Lori L. Martin

TITLE

secretary

Check one box below to indicate appropriate method of service

- ☐ Served personally upon the defendant. Place where served: _____
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left: _____
- ☐ Returned unexecuted: _____
- ☒ Other (specify): certified mail

STATEMENT OF SERVICE FEES

TRAVEL

SERVICES

TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on

7-11-90
Date

Signature of Server

Lori L. Martin

COMFORT, LIPE & GREEN
2100 MID CONTINENT TWR.
401 SOUTH B
TULSA, OK 74133

Address of Server

P 565 862 740

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

Sent to Jose Ordanez	
Street and No. 6440 S 82nd E Ave	
P.O., State, and ZIP Code Tulsa, OK 74133	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$

U.S.G.P.O. 1989-234-555

S Form 3800, June 1985

Postmark or Date

6/29 (Summons and
Complaint)

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery (Extra charge)

3. Article Addressed to:

Jose Ordanez
6440 South 82nd East Avenue
Tulsa, Oklahoma 74133

4. Article Number

P 565 862 740

Type of Service:

- ☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

B. Addressee's Address (ONLY if requested and fee paid)

5. Signature - Addressee

X

6. Signature - Agent

X

7. Date of Delivery

7-9-90

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
SEP 6 1990

LOCAL AMERICA BANK OF TULSA,
F.S.B.

Plaintiff,

vs.

OEHL, INC., an Oklahoma
corporation; and H. ALLAN
OEHLSCHLAGER, individually,

Defendants.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

Case No. 89-C-698-E

ORDER

This matter comes on before me the undersigned Judge pursuant to the Motion of the Plaintiff Local America Bank of Tulsa, F.S.B. to dismiss its Complaint and all claims stated therein without prejudice. For good cause shown, the Court FINDS that the Plaintiff's Motion should be granted.

IT IS THEREFORE ORDERED AND DECREED, that the Complaint of Local America and all claims stated therein against the Defendants Oehl, Inc. and H. Allan Oehlschlager should be and hereby is dismissed without prejudice, each party to pay its own costs.

S/ JAMES O. ELLISON

Judge of the United States
District Court for the
Northern District of Oklahoma

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 6 1990

UNION BANK AND TRUST,
BARTLESVILLE, OKLAHOMA,

Plaintiff,

vs.

THOMAS J. NAVE and JAMES
E. STALEY,

Defendants.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

Case No. 88-C-1506-E

CONSOLIDATED

UNION BANK AND TRUST,
BARTLESVILLE, OKLAHOMA,

Plaintiff,

vs.

THOMAS J. NAVE, JAMES E. STALEY,
and CHARLES N. EPPERSON,

Defendants.

WITH

Case No. 88-C-1507-E

JOURNAL ENTRY OF JUDGMENT
AS TO DEFENDANT THOMAS J. NAVE

COMES NOW for consideration the Motion to Reconsider of Defendant, Thomas J. Nave ("Nave"). Nave has requested this Court reconsider this Court's Order of January 4, 1990 granting summary judgment in favor of the Federal Deposit Insurance Corporation ("FDIC"). The Court finds as follows:

1. For the reasons set forth in the Court's order of August 6, 1990, the Motion to Reconsider is denied.

2. On or about December 15, 1986, Defendants Thomas J. Nave a/k/a Tom Nave and James E. Staley, a/k/a Jim Staley ("Staley") executed and delivered to Union Bank and Trust, Bartlesville, Oklahoma ("Bank") a promissory note in the principal sum of \$35,000 ("Nave and Staley Note").

3. On or about June 16, 1986 Nave, Staley and Charles N. Epperson ("Epperson") executed and delivered to the Bank unlimited and continuing guaranties ("Guaranties") of all indebtedness of Naco Plastics, Inc. to the Bank.

4. On or about June 16, 1986 Naco Plastics, Inc. executed and delivered to the Bank a promissory note in the principal sum of \$500,000 ("Naco Note 1").

5. On or about October 7, 1986 Naco Plastics, Inc. executed and delivered to the Bank a promissory note in the principal sum of \$130,000. Overdrafts and collections subsequently caused the principal amount to be increased by \$5,579.71 ("Naco Note 2").

6. The FDIC is the current holder of each of the above-referenced promissory notes and guaranties.

7. The Nave and Staley Note is in default and there is currently due and owing thereon the principal sum of \$35,000, plus accrued interest as of April 20, 1989 of \$11,615.08, plus interest accruing thereafter at the rate of Union Bank and Trust prime plus 8%, plus attorney's fees and costs.

8. Naco Note 1 is in default and there is currently due and owing thereon the principal sum of \$2,316.03, plus accrued interest as of April 20, 1989 of \$38,951.04, plus interest accruing after april 20, 1989, plus a reasonable attorney's fee and costs.

9. Naco Note 2 is in default and there is currently due and owing thereon the principal sum of \$135,579.71, together with accrued interest as of April 20, 1989 of \$45,807.09, plus interest accruing thereafter at the rate of Union Bank and Trust prime plus 7½%, plus a reasonable attorney's fee and costs.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment be entered in favor of the Federal Deposit Insurance Corporation as follows:

A. As against Defendant Thomas J. Nave in the amount of \$35,000 plus accrued interest as of April 20, 1989 of \$11,615.08, plus interest accruing thereafter at the rate of Union Bank and Trust prime plus 8%, plus a reasonable attorney's fee and costs in connection with the collection of same, and that the liability of Thomas J. Nave is joint

and several with the liability of James E. Staley pursuant to the Journal Entry of Judgment entered as to James E. Staley on April 12, 1990.

B. As against Defendant Thomas J. Nave in the principal sum of \$2,316.03, plus interest accrued as of April 20, 1989, of \$38,951.04, plus interest accruing thereafter, plus a reasonable attorney's fee and costs in connection with the collection of the same, and that said liability is joint and several with the liability of James E. Staley and Charles N. Epperson pursuant to the Journal Entry of Judgment entered against James E. Staley and Charles N. Epperson on April 12, 1990.

C. As against Defendant Thomas J. Nave in the principal sum of \$135,579.71, plus interest accrued as of April 20, 1989 in the amount of \$45,807.09, plus interest accruing thereafter at the rate of Union Bank and Trust prime plus 7½%, plus a reasonable attorney's fee and costs in connection with collection of same, and that the liability of Defendant Nave is joint and several with the liability of James E. Staley and Charles N. Epperson under the Journal Entry of Judgment entered against James E. Staley and Charles N. Epperson on April 12, 1990.


FOR ALL OF WHICH LET EXECUTION ISSUE.

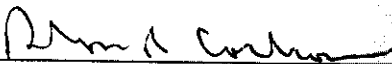
DATED and entered on the judgment docket this 5th day of Sept. August, 1990.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:


James W. Rusher
Gable & Gotwals
20th Floor, Fourth National Bldg.
Tulsa, OK 74119
ATTORNEYS FOR FEDERAL DEPOSIT INSURANCE CORP.


Alan R. Carlson
William W. Busby
Garrison Brown Carlson & Buchanan
530 S.E. Delaware
P.O. Box 1217
Bartlesville, OK 74003
ATTORNEYS FOR THOMAS J. NAVE

FILED

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

SEP 6 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

UNION BANK AND TRUST,
BARTLESVILLE, OKLAHOMA,

Plaintiff,

vs.

THOMAS J. NAVE and JAMES
E. STALEY,

Defendants.

Case No. 88-C-1506-E

CONSOLIDATED

UNION BANK AND TRUST,
BARTLESVILLE, OKLAHOMA,

Plaintiff,

vs.

THOMAS J. NAVE, JAMES E. STALEY,
and CHARLES N. EPPERSON,

Defendants.

WITH

Case No. 88-C-1507-E ✓

**JOURNAL ENTRY OF JUDGMENT
AS TO DEFENDANT THOMAS J. NAVE**

COMES NOW for consideration the Motion to Reconsider of Defendant, Thomas J. Nave ("Nave"). Nave has requested this Court reconsider this Court's Order of January 4, 1990 granting summary judgment in favor of the Federal Deposit Insurance Corporation ("FDIC"). The Court finds as follows:

1. For the reasons set forth in the Court's order of August 6, 1990, the Motion to Reconsider is denied.

2. On or about December 15, 1986, Defendants Thomas J. Nave a/k/a Tom Nave and James E. Staley, a/k/a Jim Staley ("Staley") executed and delivered to Union Bank and Trust, Bartlesville, Oklahoma ("Bank") a promissory note in the principal sum of \$35,000 ("Nave and Staley Note").

3. On or about June 16, 1986 Nave, Staley and Charles N. Epperson ("Epperson") executed and delivered to the Bank unlimited and continuing guaranties ("Guaranties") of all indebtedness of Naco Plastics, Inc. to the Bank.

4. On or about June 16, 1986 Naco Plastics, Inc. executed and delivered to the Bank a promissory note in the principal sum of \$500,000 ("Naco Note 1").

5. On or about October 7, 1986 Naco Plastics, Inc. executed and delivered to the Bank a promissory note in the principal sum of \$130,000. Overdrafts and collections subsequently caused the principal amount to be increased by \$5,579.71 ("Naco Note 2").

6. The FDIC is the current holder of each of the above-referenced promissory notes and guaranties.

7. The Nave and Staley Note is in default and there is currently due and owing thereon the principal sum of \$35,000, plus accrued interest as of April 20, 1989 of \$11,615.08, plus interest accruing thereafter at the rate of Union Bank and Trust prime plus 8%, plus attorney's fees and costs.

8. Naco Note 1 is in default and there is currently due and owing thereon the principal sum of \$2,316.03, plus accrued interest as of April 20, 1989 of \$38,951.04, plus interest accruing after april 20, 1989, plus a reasonable attorney's fee and costs.

9. Naco Note 2 is in default and there is currently due and owing thereon the principal sum of \$135,579.71, together with accrued interest as of April 20, 1989 of \$45,807.09, plus interest accruing thereafter at the rate of Union Bank and Trust prime plus 7½%, plus a reasonable attorney's fee and costs.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment be entered in favor of the Federal Deposit Insurance Corporation as follows:

A. As against Defendant Thomas J. Nave in the amount of \$35,000 plus accrued interest as of April 20, 1989 of \$11,615.08, plus interest accruing thereafter at the rate of Union Bank and Trust prime plus 8%, plus a reasonable attorney's fee and costs in connection with the collection of same, and that the liability of Thomas J. Nave is joint

and several with the liability of James E. Staley pursuant to the Journal Entry of Judgment entered as to James E. Staley on April 12, 1990.

B. As against Defendant Thomas J. Nave in the principal sum of \$2,316.03, plus interest accrued as of April 20, 1989, of \$38,951.04, plus interest accruing thereafter, plus a reasonable attorney's fee and costs in connection with the collection of the same, and that said liability is joint and several with the liability of James E. Staley and Charles N. Epperson pursuant to the Journal Entry of Judgment entered against James E. Staley and Charles N. Epperson on April 12, 1990.

C. As against Defendant Thomas J. Nave in the principal sum of \$135,579.71, plus interest accrued as of April 20, 1989 in the amount of \$45,807.09, plus interest accruing thereafter at the rate of Union Bank and Trust prime plus 7½%, plus a reasonable attorney's fee and costs in connection with collection of same, and that the liability of Defendant Nave is joint and several with the liability of James E. Staley and Charles N. Epperson under the Journal Entry of Judgment entered against James E. Staley and Charles N. Epperson on April 12, 1990.


FOR ALL OF WHICH LET EXECUTION ISSUE.

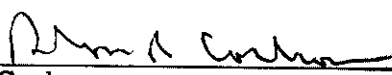
DATED and entered on the judgment docket this 5th day of Sept, 1990.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:


James W. Rusher
Gable & Gotwals
20th Floor, Fourth National Bldg.
Tulsa, OK 74119
ATTORNEYS FOR FEDERAL DEPOSIT INSURANCE CORP.



Alan R. Carlson
William W. Busby
Garrison Brown Carlson & Buchanan
530 S.E. Delaware
P.O. Box 1217
Bartlesville, OK 74003
ATTORNEYS FOR THOMAS J. NAVE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 5 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ELIZABETH DOLE, Secretary of
Labor, U.S. Department of Labor,

Plaintiff,

vs.

LOCAL 65, BAKERY,
CONFECTIONERY, & TOBACCO
WORKERS INTERNATIONAL UNION,
AFL-CIO, CLC,

Defendant.

) CIVIL ACTION NO. 90-C-603-E

NOTICE OF DISMISSAL WITHOUT PREJUDICE

Plaintiff, Elizabeth Dole, Secretary of Labor, U.S.
Department of Labor, by Tony M. Graham, United States Attorney
for the Northern District of Oklahoma, through Peter Bernhardt,
Assistant United States Attorney, hereby gives notice that
the above-styled action is hereby dismissed without prejudice
pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney

PETER BERNHARDT, OBA # 741
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 4 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

JERRY PERIGO, Special
Administrator of the Estate of
SCOTT FRANKLIN FREEMAN, Deceased

Plaintiff,

v.

SHELTER LIFE INSURANCE COMPANY,
a Missouri corporation,

Defendant.

No. 90-C-252-B

ORDER

Before the Court is the Motion to Dismiss filed by the defendant, Shelter Life Insurance Company (Shelter), on the grounds that the plaintiff failed to state a claim upon which relief can be granted.

On July 26, 1988 the plaintiff, Scott Franklin Freeman, filed a petition against Shelter in this Court. After the death of the plaintiff, the Special Administrator of the Estate of Scott Franklin Freeman, Jerry Perigo [hereinafter plaintiff], filed a substitution of party plaintiff and on February 7, 1989, moved to dismiss the matter without prejudice. After the Court entered an order of dismissal without prejudice, the plaintiff refiled the petition in state court on February 13, 1989. The defendant, Shelter, filed a petition for removal on March 22, 1990 and then its motion to dismiss on March 26, 1990 now before the Court.

Upon review of the petition for removal and the briefs in support and in opposition to Shelter's motion to dismiss, the Court

finds that it is without jurisdiction to rule on this matter. Although the petition for removal states that the amount in controversy "exceeds the sum of Sixty Thousand Dollars (\$60,000), exclusive of interest and costs," the attached state court petition prays for "actual damages in excess of \$10,000.00, for punitive damages in excess of \$10,000.00" in the plaintiff's first cause of action, and for "actual damages in excess of \$10,000.00" in his second cause of action. In his response to the motion to dismiss, the plaintiff states that the amount in controversy is "in excess of Twenty Thousand Dollars" in the first cause of action and "in excess of Ten Thousand Dollars" in the second and that the Court, therefore, has no subject matter jurisdiction.

Although the plaintiff failed to file a motion to remand the case within thirty days, pursuant to 28 U.S.C. §1447(c), this Court so moves *sua sponte* and remands the case for lack of subject matter jurisdiction under 28 U.S.C. §1332.

IT IS SO ORDERED, this 4th day of September, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

PAVITER CORPORATION, et al.,)
)
Plaintiffs,)
)
vs.)
)
C & S EQUIPMENT SALES, INC.,)
)
et al.,)
)
Defendants.)

Case No. 89-C-1017-C

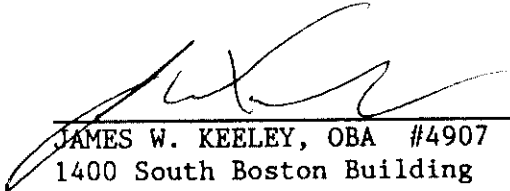
SEP -4 1990

JOHN C. CHIVERS, CLERK
U.S. DISTRICT COURT


STIPULATION OF DISMISSAL

COMES NOW Michael Rawlins and Rawlins Manufacturing, Inc. and
dismisses their cross-claim against Harold Stout and S & S Erections, Inc.

MICHAEL RAWLINS AND RAWLINS
MANUFACTURING, INC.


JAMES W. KEELEY, OBA #4907
1400 South Boston Building
Suite 680
Tulsa, Oklahoma 74119
918/587-1988

HAROLD STOUT and S & S ERECTIONS,
INC.


STEPHEN SCHNEIDER
Cornish & Schneider
917 Kennedy Building
321 S. Boston Avenue
Tulsa, Oklahoma 74103

CERTIFICATE OF MAILING

I, JAMES W. KEELEY, hereby certify that on the date of filing herein, a true and correct copy of the above and foregoing instrument was mailed, postage prepaid, to the following persons:

Ms. Mary Rounds
Hall, Estill, Hardwick, et al.
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172

Thomas J. McGeady
P. O. Box 558
Vinita, Oklahoma 74301

Jim Tilly
2 West 2nd, Suite 2220
Tulsa, Oklahoma 74101-3645



JAMES W. KEELEY